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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 38

UNIVERSITY OF KANSAS STATE LIBRARY

THE MISSOURI PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF KANSAS *EX REL.* CARR W. TAYLOR, ATTORNEY FOR THE BOARD OF RAILROAD COMMISSIONERS, AND C. C. COLEMAN, ATTORNEY GENERAL OF THE STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED DECEMBER 17, 1907.

(20,940.)

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1 In the Supreme Court of the State of Kansas.

Be it remembered, that on the 24th day of May, 1906, there was filed in the office of the Clerk of the supreme court of the state of Kansas, a petition for an alternative writ of Mandamus, in the case entitled The State of Kansas *ex rel.*, plaintiff *vs.* The Missouri Pacific Railway Company, defendant and numbered 14999, which petition for an alternative writ of mandamus with all the endorsements thereon, is in words and figures as follows, to-wit:—

2 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for the Board of Railroad Commissioners, and C. C. COLEMAN, Attorney General of the State of Kansas, Petitioner,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

Petition for Alternative Writ of Mandamus.

Comes now the state of Kansas, *ex rel.* Carr W. Taylor, attorney for the Board of Railroad Commissioners, and C. C. Coleman, attorney general of the state of Kansas, and moves the court or any justice thereof for an alternative writ of mandamus against the defendant, the Missouri Pacific Railway Company to comply with the order of the Board of Railroad Commissioners of the state of Kansas heretofore made by said board, upon the 7th day of December, 1905 and hereinafter set out in full, and as grounds for said motion your petitioner states:

1. That the defendant, the Missouri Pacific Railway Company, is a railway corporation owning and operating a railroad line from the Kansas and Missouri state line, thence westward to Madison, Kansas, as a common carrier, said line of railroad described as above being located wholly within the state of Kansas and being commonly known as the Madison Line.

2. That upon the 14th day of September, 1905, the citizens residing along the line of the Missouri Pacific Railway extending from the Missouri and Kansas state line to Madison, Kansas, filed their complaint with the board of railroad Commissioners, wherein they alleged in substance that for many years last past the said defendant railway company operated a passenger train over its said line through the county of Linn, state of Kansas, to said Madison, Kansas, which service said complainants alleged was remunerative to said railway company; that notwithstanding the fact that said service was remunerative, that the said defendant, on the — day of ——, 1905, discontinued the same and that the people living in the towns along said line of railroad have had no passenger

3 train service upon said line of railroad, but have been compelled to resort to what is known as an accommodation or

mixed train for their passenger service, which said service is dangerous to the patrons of said road and prevents said railroad from maintaining a proper schedule for the arrival and departure of trains; that said line of road is highly profitable to said company; that the country through which it passes is thickly populated and highly productive and furnishes said line of railroad a large tonnage of freight, thereby enabling it to earn a reasonable income upon its investment, aside from its loss or earnings on passenger traffic.

That thereafter the said defendant filed its answer to the above mentioned petition and that thereafter, upon the 25th day of October, 1905, after legal notice to all interested parties, a trial was had by the said commissioners upon the issues joined, at Blue Mound, Kansas, on said line of road, on the 25th day of October, 1905, and that thereafter, on the 7th day of December, 1905, after the above mentioned hearing at Blue Mound, the said board of railroad commissioners found that the people along the line of the Madison Branch, above described, are entitled to better passenger train service than they are now receiving, and issued an order to the said defendant, the Missouri Pacific Railway Company, in words and figures, omitting caption and certificate of secretary, as follows, to-wit:

"*Finding and Order of the Board.*

"Now, on this 7th day of December, 1905, after hearing the evidence and argument of counsel, in the above entitled action, the board finds that during the years 1902, and 1903, when the respondent railway company operated a passenger train on the Madison Branch of its line, that the said passenger train was operated at a loss and there was no testimony introduced at this hearing that the train, if put on as asked for by the petitioners, could be operated at a profit to the respondent company. The board believes that the people along the line of the Madison Branch of said company are entitled to better passenger train service than they are now receiving, and it has been represented to the board by officers of said company, that the respondent is constructing motor cars for
4 establishment on its branch lines that can be operated at a much less expense than steam service.

"It is therefore ordered by the board that on or before the 1st day of May, 1906, a motor passenger car service be put on and operated on said Madison Branch, from Madison, Kansas, to the Kansas and Missouri state line, and in the event said railroad company is unable at that time to put on a motor car passenger service, a regular steam passenger train service be forthwith put on and operated."

3. Your petition- further alleges that the line of railroad now operated by the defendant company, was originally chartered under and by virtue of the laws of the state of Kansas, as the Interstate Railroad Company, and that the charter granted to said Interstate Railroad Company gave authority to said company to operate said line of railroad as a common carrier between the said state line of Missouri and Kansas to said Madison, Kansas; that said charter conferred upon the said Interstate Railroad Company full power

and authority to carry on the business of a common carrier and maintain a daily passenger and freight service over the above described line of railroad; that said charter did not limit the business of said Interstate Railroad Company to the carriage of freight, but obligated said railroad company to maintain a daily service upon said line of railroad, of both passenger and freight trains. A copy of said charter is attached hereto, marked "Exhibit A", and is hereby made a part hereof.

Your petitioner further alleges that thereafter, on July 3, 1890, said Interstate Railroad Company was consolidated with the St. Louis & Emporia Railroad Company, under the name of the Interstate Railway Company, and that thereafter, on Jan'y 10, 1891, the said Interstate Railway Company, together with eleven other companies, consolidated into the Kansas, Colorado & Pacific Railway Company; that under and by virtue of the agreements of consolidation above mentioned it was each time agreed and provided that the consolidated company should own and control the properties and privileges of the constituent companies and should be subject to all the obligations and liabilities to the state which belonged to or rested upon either of the companies making the consolidations. Your petitioner further avers that the above mentioned line of railroad consolidated into the Kansas & Colorado Pacific Railway Company, has for many years last past, and is now being operated by the Missouri Pacific Railway Company, the defendant herein, under and by virtue of a contract of lease, subject to all of the obligations imposed by the terms of the charter granted to said Interstate Railroad Company above set forth and made a part of this petition and that the said defendant company is subject to all the obligations and liabilities to the state which belonged to or rested upon the said Interstate Railroad Company before the above mentioned consolidations and lease to this defendant.

Your petitioner further avers that the said defendant is obligated, under and by virtue of the terms of the charter above referred to, to maintain daily freight and passenger train service upon the above described line of railroad; that said defendant has refused and is refusing to comply with the terms of said charter and is maintaining only a freight train service upon said line of railroad, giving to the people living in the towns and cities upon said lines and the country adjacent thereto only the opportunity to travel as passengers upon a car set into the freight trains operated upon said lines; that such service is exceedingly dangerous and forces the passengers who are compelled to avail themselves of the same, to assume risks of injury which they are not compelled to assume under the law while riding as passengers upon regular passenger trains; that by reason of these facts said defendant has — and is violating its duty to the public and to the state under the provisions of the above mentioned charter and the laws of the state of Kansas.

4. Your petitioner further alleges that the said board of railroad commissioners of the state of Kansas made the above and foregoing order set out in clause 2. hereof under and by virtue of the power and authority vested in it by the laws of the state of Kansas.

5. Your petitioner further alleges that a copy of the order
6 above set forth, duly certified as required by law, was forthwith served upon the defendant, the Missouri Pacific Railway Company.

6. Your petitioner further alleges that the said defendant the Missouri Pacific Railway Company failed to commence an action against the said board of railroad commissioners to have the above and foregoing order of the said board vacated within the time provided by law and that said order has become a final order and that the same is *prima facie* reasonable and just.

7. Your petitioner further alleges that said defendant railway company has wholly failed and refused to comply with the above and foregoing order of said board of railroad commissioners or any of its terms and has failed and refused to comply with the provisions of the terms of the charter to the said Interstate Railroad Company above set forth and its duty to the public and to the state under the law.

Wherefore your petitioner prays that this, its motion be sustained and that an alternative writ of mandamus be issued, directed to the said defendant company, commanding said company to comply with the above and foregoing order of the Board of Railroad Commissioners.

CARR W. TAYLOR,
Attorney for the Board of Railroad Commissioners, State of Kansas.
C. C. COLEMAN,
Attorney General, State of Kansas.

STATE OF KANSAS, *Shawnee County, ss:*

Cyrus Anderson, being first duly sworn, on oath says: That he is the Secretary of the Board of Railroad Commissioners within and for the state of Kansas; that he has read the above and foregoing petition and that the allegations therein are true.

CYRUS ANDERSON.

Subscribed and sworn to before me, this 23rd day of May, 1906.
[SEAL.] PEARL HUGHES,
Notary Public.

Commission expires July 1, 1907.

7 "EX. A."

STATE OF KANSAS.

(Seal of the State of Kansas.)

OFFICE OF THE SECRETARY OF STATE.

I, J. R Burrow, Secretary of State of the State of Kansas, do hereby certify that the following and annexed is a true and complete copy of the Charter of "The Inter-state Railroad Company," filed for record in this office May 29, 1885.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal. Done at Topeka, Kansas, this 23rd day of May, A. D., 1906.

[SEAL.]

J. R. BURROW,
Secretary of State.

By ——— ———,
Assistant Secretary of State.

8 *Charter of the Inter-state Railroad Company.*

First.

The name of this corporation is The Inter-state Railroad Company.

Second.

The purposes for which this corporation is formed are the construction, maintenance and operating of a railway, and telegraph line in connection therewith; the leasing and operating of railways belonging to other corporations; the purchasing and operating of railways built or partially built by other corporations, or which may hereafter be built or partially built by other corporations.

Third.

The place or places where its business is to be transacted in the State of Kansas are as follows, to-wit: Topeka, Shawnee County; Paola, Miami County; Iola, Allen County; Independence, Montgomery County; Sedan, Chautauqua County; Winfield, Cowley County; Wellington, Sumner County; Wichita, Sedgwick County; and at all stations along the line of any railway owned, leased or operated by it; and its business in the State of Missouri will be transacted at the cities of St. Louis, Sedalia, Marshall, Versailles, Lexington and Kansas City, and at all stations along the line of any railway owned, leased or operated by it.

Fourth.

The term for which it is to exist is Nine Hundred and Ninety-Nine years.

Fifth.

The number of its Directors is Seven (7).

Sixth.

The names and residences of the Directors appointed for the first year are as follows, to-wit:

W. H. Dale, Emporia, Kansas.
Edward S. Thacher, Emporia, Kansas.
Rob't G. Brodie, Emporia, Kansas.
Edwin Fowler, Emporia, Kansas.
9 H. P. Clark, Emporia, Kansas.
D. M. Davis, Emporia, Kansas.
C. A. Ballweg, Emporia, Kansas.

Seventh.

The amount of its capital stock is the sum of Five Million Dollars ($5,000,000) divided into Fifty Thousand shares (50,000) of One Hundred Dollars ($100) per share.

Eighth.

The kind of road intended to be constructed is a standard gauge railroad.

Ninth.

The places from and to which said railroad is intended to be run are the City of St. Louis in the State of Missouri and Gainesville in the State of Texas.

Tenth.

The counties through which said railroad is intended to be run in the State of Kansas are as follows: Wyandotte, Johnson, Douglas, Shawnee, Miami, Franklin, Anderson, Linn, Bourbon, Allen, Neosho, Crawford, Labette, Cherokee, Montgomery, Wilson, Woodson, Coffey, Osage, Wabaunsee, Davis, Marion, Lyon, Chase, Greenwood, Butler, Elk, Cowley, Chautauqua, Sumner, Sedgwick, Harvey, Morris, Dickinson, Saline, Russell, Lincoln, Osborne, Rooks, Graham, Sheridan, Thomas, Sherman, McPherson, Harper, Kingman, Reno, Rice, Ellsworth, Barton, Russell, Stafford, Pratt, Pawnee, Comanche, Edwards, Rush, Ness, Lane, Greeley, Hodgeman, Ford, Seward, Finney, Scott, Clark, Meade, Wichita and Hamilton; and the counties in the State of Missouri through which said railroad is intended to run are St. Louis, Jefferson, St. Charles, Franklin, Warren, Crawford, Washington, Phelps, Maries, Osage, Calloway, Cole, Miller, Pulaski, Camden, Morgan, Moniteau, Cooper, Pettis, Benton, Hickory, Polk, Dallas, Laclede, Dade, Cedar, St. Clair, Henry, Johnson, La Fayette, Saline, Jackson, Cass, Bates, Vernon, Barton, Jasper, Newton, Lawrence, Greene, Webster, Wright, Texas, Douglas, Ozark, Taney, Christian, Stone, Barry and McDonald.

10 Eleventh.

The estimated length of the road is Fifteen Hundred Miles.

STATE OF KANSAS, *County of Lyon*, ss:

Personally appeared before me the undersigned, a Notary Public in and for said state, W. H. Dale, Edward S. Thacher, Rob't G. Brodie, Edwin Fowler, H. P. Clark, D. M. Davis, and C. A. Ballweg, who were each personally known to me to be the same persons who signed and executed the above and foregoing charter, and they each severally acknowledged that they signed and executed the above and foregoing charter for the uses and purposes therein stated and expressed.

In testimony whereof I hereunto set my name and official seal this 28th day of May, 1885.

[SEAL.]

J. M. STEELE.
Notary Public, Lyon Co., Kansas.

My term expires Nov. 7, 1887.

Filed for record May 29, 1885.
E. B. ALLEN.
Sec'y of State.

Endorsed: 14999. In the Supreme Court of Kansas. The State of Kansas, *Ex rel.* Carr W. Taylor and C. C. Coleman, etc. *vs.* The Missouri Pacific Ry. Co. Petition for Mandamus. Filed May 24, 1906. D. A. Valentine, Clerk Supreme Court.

11 And on the same day viz: the 24th day of May, 1906, the same being a regular judicial day of the January 1906 term of said court, before the Honorable William A. Johnston, Chief Justice, at his chambers in the city of Topeka, the following proceeding was had and remains of record as follows to-wit:—

12 *Journal Entry Allowing Alternative Writ.*

In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* C. C. COLEMAN, Att'y Gen., Plaintiff,
vs.
THE MO. PAC. RLY. CO., Defendant.

Now comes the plaintiff by C. C. Coleman, attorney general and presents its verified petition for an alternative writ of mandamus herein; and thereupon after due consideration by the court it is ordered that the alternative writ of mandamus issue to the defendants as prayed for in said petition, returnable on Monday the 4th day of June 1906.

13 Be it further remembered that on the same day to wit:— the 24th day of May 1906, there was issued from the office of the clerk of the supreme court of the state of Kansas, an alternative writ of Mandamus, which writ of Mandamus, was afterwards on the 23rd day of June 1906, returned into the office of the clerk and filed together with the return of the defendant to said writ, which writ is in words and figures as follows, to-wit:—

14 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for the Board of Railroad Commissioners, and C. C. COLEMAN, Attorney General of the State of Kansas, Petitioner,

v.

THE MISSOURI PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

The defendant, The Missouri Pacific Railway Company, returns herewith the alternative writ of mandamus issued against and served upon it in the above entitled cause, without having obeyed the command of said writ, its reasons for said failure to obey said command being set forth in its answer to said writ herewith filed, which answer it makes a part hereof.

WAGGENER, DOSTER & ORR,
Attorneys for Defendant.

15 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for the Board of Railroad Commissioners, and C. C. COLEMAN, Attorney General of the State of Kansas, Petitioner,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

Alternative Writ of Mandamus.

The State of Kansas to the Missouri Pacific Railway Company, Greeting:

Whereas, It appears from a petition this day filed in this Court upon the affidavit of Cyrus Anderson, the Secretary of the Board of Railroad Commissioners, within and for the State of Kansas:

1. That the defendant, the Missouri Pacific Railway Company, is a railway corporation owning and operating a railroad line from the Kansas and Missouri state line, thence westward to Madison, Kansas, as a common carrier, said line of railroad described as above being located wholly within the state of Kansas and being commonly known as the Madison Line.

2. That upon the 14th day of September, 1905, the citizens residing along the line of the Missouri Pacific Railway extending from the Missouri and Kansas state line to Madison, Kansas, filed their complaint with the board of railroad commissioners, wherein they alleged in substance that for many years last past the said defendant railway company operated a passenger train over its said line through the county of Linn, state of Kansas, to said Madison, Kansas, which service said complainants alleged was remunerative to said railway company; that notwithstanding the fact that said service was remunerative, that the said defendant, on the — day of ——, 1905,

discontinued the same and that the people living in the towns along said line of railroad have had no passenger train service upon said line of railroad, but have been compelled to resort to what is known as an accommodation or mixed train for their passenger
16 service, which said service is dangerous to the patrons of said road and prevents said railroad from maintaining a proper schedule for the arrival and departure of trains; that said line of road is highly profitable to said company; that the country through which it passes is thickly populated and highly productive and furnishes said line of railroad a large tonnage of freight, thereby enabling it to earn a reasonable income upon its investment, aside from its loss of earnings on passenger traffic.

That thereafter the said defendant filed its answer to the above mentioned petition and that thereafter, upon the 25th day of October, 1905, after legal notice to all interested parties, a trial was had by the said commissioners upon the issues joined, at Blue Mound, Kansas, on said line of road, on the 25th day of October, 1905, and that thereafter, on the 7th day of December, 1905, after the above mentioned hearing at Blue Mound, the said board of railroad commissioners found that the people along the line of the Madison Branch, above described, are entitled to better passenger train service than they are now receiving, and issued an order to the said defendant, the Missouri Pacific Railway Company, in words and figures, omitting caption and certificate of secretary, as follows, to wit:

"*Finding and Order of the Board.*

"Now, on this 7th day of December, 1905, after hearing the evidence and argument of counsel, in the above entitled action, the board finds that during the years 1902, and 1903, when the respondent railway company operated a passenger train on the Madison Branch of its line, that the said passenger train was operated at a loss and there was no testimony introduced at this hearing that the train, if put on as asked for by the petitioners, could be operated at a profit to the respondent company. The board believes that the people along the line of the Madison Branch of said company are entitled to better passenger train service than they are now receiving, and it has been represented to the board by officers of said company, that the respondent is constructing motor cars for establishment on its branch lines that can be operated at a much less expense than steam service.

"It is therefore ordered by the board that on or before the
17 1st day of May, 1906, a motor passenger car service be put on and operated on said Madison Branch, from Madison, Kansas, to the Kansas and Missouri state line, and in the event said railroad company is unable at that time to put on a motor car passenger service, a regular steam passenger train service be forthwith put on and operated."

3. Your petitioner further alleges that the line of railroad now operated by the defendant company, was originally chartered under and by virtue of the laws of the state of Kansas, as the Interstate

Railroad Company, and that the charter granted to said Interstate Railroad Company gave authority to said company to operate said line of railroad as a common carrier between the said state line of Missouri and Kansas to said Madison, Kansas; that said charter conferred upon the said Interstate Railroad Company full power and authority to carry on the business of a common carrier and maintain a daily passenger and freight service over the above described line of railroad; that said charter did not limit the business of said Interstate Railroad Company to the carriage of freight, but obligated said railroad company to maintain a daily service upon said line of railroad, of both passenger and freight trains. A copy of said charter is attached hereto, marked "Exhibit A" and is hereby made a part hereof.

Your petitioner further alleges that thereafter, on July 3, 1890, said Interstate Railroad Company was consolidated with the St. Louis & Emporia Railroad Company, under the name of the Interstate Railway Company, and that thereafter, on Jan'y 10, 1891, the said Interstate Railway Company, together with eleven other companies, consolidated into the Kansas, Colorado & Pacific Railway Company; that under and by virtue of the agreements of consolidation above mentioned, it was each time agreed and provided that the consolidated company should own and control the properties and privileges of the constituent companies and should be subject to all the obligations and liabilities to the state which belonged to or rested upon either of the companies making the consolidations. Your petitioner further avers that the above mentioned line of
18 railroad consolidated into the Kansas & Colorado Pacific Railway Company, has for many years last past, and is now being operated by the Missouri Pacific Railway Company, the defendant herein, under and by virtue of a contract of lease, subject to all of the obligations imposed by the terms of the charter granted to said Interstate Railroad Company above set forth and made a part of this petition and that the said defendant company is subject to all the obligations and liabilities to the state which belonged to or rested upon the said Interstate Railroad Company before the above mentioned consolidations and lease to this defendant.

Your petitioner further avers that the said defendant is obligated, under and by virtue of the terms of the charter above referred to, to maintain daily freight and passenger train service upon the above described line of railroad; that said defendant has refused and is refusing to comply with the terms of said charter and is maintaining only a freight train service upon said line of railroad, giving to the people living in the towns and cities upon said lines and the country adjacent thereto only the opportunity to travel as passengers upon a car set into the freight trains operated upon said lines; that such service is exceedingly dangerous and forces the passengers who are compelled to avail themselves of the same, to assume risks of injury which they are not compelled to assume under the law while riding as passengers upon regular passenger trains; that by reason of these facts said defendant has and is violating its duty to the public

and to the state under the provisions of the above mentioned charter and the laws of the state of Kansas.

4. Your petitioner further alleges that the said board of railroad commissioners of the state of Kansas made the above and foregoing order set out in clause 2. hereof under and by virtue of the power and authority vested in it by the laws of the state of Kansas.

5. Your petitioner further alleges that a copy of the order above set forth, duly certified as required by law, was forthwith served upon the defendant, the Missouri Pacific Railway Company.

6. Your petitioner further alleges that the said defendant
19 the Missouri Pacific Railway Company failed to commence an action against the said board of railroad commissioners to have the above and foregoing order of the said board vacated within the time provided by law and that said order has become a final order and that the same is *prima facie* reasonable and just.

7. Your petitioner further alleges that said defendant railway company has wholly failed and refused to comply with the above and foregoing order of said board of railroad commissioners or any of its terms and has failed and refused to comply with the provisions or the terms of the charter to the said Interstate Railroad Company above set forth and its duty to the public and to the state under the law.

Now, therefore, This is to command you, the Missouri Pacific Railway Company, immediately upon the receipt of this writ to install a motor passenger car service upon said Madison line from Madison, Kansas, to the Kansas and Missouri state line, and in the event that you are unable to put on a motor car passenger service, to immediately install and operate a regular steam passenger train service upon said line; or in default thereof, on or before the 4th day of June, 1906, show to the Supreme Court of the State of Kansas at its court room in the City of Topeka, in the State of Kansas, cause why you should not do so; and that you then and there return this writ with your certificate of having done as herein commanded.

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

20 *Charter of the Inter-state Railroad Company.*

First.

The name of this corporation is The Inter-state Railroad Company.

Second.

The purposes for which this corporation is formed are the construction, maintenance and operating of a railway, and telegraph line in connection therewith; the leasing and operating of railways belonging to other corporations; the purchasing and operating of railways built or partially built by other corporations, or which may hereafter be built or partially built by other corporations.

Third.

The place or places where its business is to be transacted in the State of Kansas are as follows, to-wit: Topeka, Shawnee County; Paola, Miami County; Iola, Allen County; Independence, Montgomery County; Sedan, Chautauqua County; Winfield, Cowley County; Wellington, Sumner County; Wichita, Sedgwick County; and at all stations along the line of any railway owned, leased or operated by it; and its business in the State of Missouri will be transacted at the cities of St. Louis, Sedalia, Marshall, Versailles, Lexington and Kansas City, and at all stations along the line of any railroad owned, leased or operated by it.

Fourth.

The term for which it is to exist is Nine Hundred and Ninety-nine years.

Fifth.

The number of its Directors is Seven (7).

Sixth.

The names and residences of the Directors appointed for the first year are as follows, to-wit:

W. H. Dale, Emporia, Kansas,
Edward S. Thacher, Emporia, Kansas,
Robt. G. Brodie, Emporia, Kansas,
Edwin Fowler, Emporia, Kansas,
21 H. P. Clark, Emporia, Kansas,
D. M. Davis, Emporia, Kansas,
C. A. Ballweg, Emporia, Kansas.

Seventh.

The amount of its capital stock is the sum of Five Million Dollars ($5,000,000) divided into Fifty Thousand shares (50,000) of One Hundred Dollars ($100) per share.

Eighth.

The kind of road intended to be constructed is a standard gauge railroad.

Ninth.

The places from and to which said railroad is intended to be run are the City of St. Louis in the State of Missouri and Gainsville in the State of Texas.

Tenth.

The counties through which said railroad is intended to be run in the State of Kansas are as follows: Wyandotte, Johnson, Douglas, Shawnee, Miami, Franklin, Anderson, Linn, Bourbon, Allen, Neosho, Crawford, Labette, Cherokee, Montgomery, Wilson, Woodson,

Coffey, Osage, Wabaunsee, Davis, Marion, Lyon, Chase, Greenwood, Butler, Elk, Cowley, Chautauqua, Sumner, Sedgwick, Harvey, Morris, Dickinson, Saline, Russell, Lincoln, Osborne, Rooks, Graham, Sheridan, Thomas, Sherman, McPherson, Harper, Kingman, Reno, Rice, Ellsworth, Barton, Russell, Stafford, Pratt, Pawnee, Comanche, Edwards, Rush, Ness, Lane, Greeley, Hodgeman, Ford, Seward, Finney, Scott, Clark, Meade, Wichita and Hamilton; and the counties in the State of Missouri through which said railroad is intended to run are St. Louis, Jefferson, St. Charles, Franklin, Warren, Crawford, Washington, Phelps, Maries, Osage, Calloway, Cole, Miller, Pulaski, Camden, Morgan, Moniteau, Cooper, Pettis, Benton, Hickory, Polk, Dallas, Laclede, Dade, Cedar, St. Clair, Henry, Johnson, La Fayette, Saline, Jackson, Cass, Bates, Vernon, Barton, Jasper, Newton, Lawrence, Greene, Webster, Wright, Texas, Douglas, Ozark, Taney, Christian, Stone, Barry and McDonald.

22 Eleventh.

The estimated length of the road is Fifteen Hundred Miles.

STATE OF KANSAS, *County of Lyon, ss:*

Personally appeared before me the undersigned, a Notary Public in and for said state, W. H. Dale, Edward S. Thacher, Robt. G. Brodie, Edwin Fowler, H. P. Clarke, D. M. Davis, and C. A. Ballweg who were each personally known to me to be the same persons who signed and executed the above and foregoing charter, and they each severally acknowledged that they signed and executed the above and foregoing charter for the uses and purposes therein stated and expressed.

In testimony whereof I hereunto set my name and official seal this 28th day of May, 1885.

[SEAL.]

J. M. STEELE.
Notary Public, Lyon Co., Kansas.

My term expires Nov. 7, 1887.
Filed for record May 29, 1885.

E. B. ALLEN,
Sec'y of State.

23–34 STATE OF KANSAS.

(Seal of the State of Kansas.)

OFFICE OF SECRETARY OF STATE.

I, J. R. Burrow, Secretary of State of the State of Kansas, do hereby certify that the following and annexed is a true and correct copy of the Charter of "The Inter-state Railroad Company", filed for record in this office May 29, 1885.

In testimony whereof, I have hereunto subscribed my name and

affixed my official seal. Done at Topeka, Kansas, this 23rd day of May, A. D. 1906.

[SEAL.]

J. R. BURROW,
Secretary of State.

By ——— ———,
Assistant Secretary of State.

Endorsed: 14999. The State of Kansas *ex rel.* Carr W. Taylor, Atty. for Board of Railroad Commissioners and C. C. Coleman, Atty. Genl. of Kansas, *vs.* The Mo. P. Ry. Co. Alternative Writ of Mandamus. Alternative Writ allowed by me this 24th day of May 1906. W. A. Johnston Chief Justice. Filed Jun- 23 1906. D. A. Valentine, Clerk Supreme Court.

* * * * * * *

35 And afterwards on the 23rd day of June A. D. 1906, there was filed in the office of the clerk of the supreme court of the state of Kansas, the answer of the defendant to the alternative writ of Mandamus and its return thereto, which answer and return is in the words and figures as follows, to-wit:

36 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for the Board of Railroad Commissioners, and C. C. COLEMAN, Attorney General of the State of Kansas, Petitioner,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

Answer.

First Ground of Defense.

The defendant, The Missouri Pacific Railway Company, for answer to the matters and things set forth in the alternative writ of mandamus issued herein, and for a first ground of defense thereto, admits all and singular the allegations of said alternative writ except as the same are herein denied or explained.

Said defendant denies the allegation in said writ that it owns and operates a line of railway from the Kansas and Missouri state line westward to Madison, Kansas, and on the contrary avers the fact to be that it operates a line of railway between the towns of Butler, Missouri, and Madison, Kansas, the said town of Butler, Missouri, being about twenty miles east of the line between the said states of Kansas and Missouri, and the town of Madison, Kansas, being about eighty-eight miles west of the line between said states.

Said defendant further alleges that said line of railway between said towns of Butler, Missouri, and Madison, Kansas, is a part of the Missouri Pacific general railway system, and constitutes, for operating purposes, a separate Division of said Missouri Pacific Rail-

way, and is locally known as, and for purposes of designation herein will be called, the Madison Branch.

Said defendant further alleges that the said town of Butler, Missouri, is situate on one of the main lines of the Missouri Pacific Railway system, to wit, on the line extending from southern and southeastern Kansas to and through the towns of Coffeyville and
37 Pittsburg, Kansas, Joplin, Carthage, Nevada and Pleasant Hill, Missouri, and from thence to the city of St. Louis, Missouri; that at said town of Butler, Missouri, it has been compelled to establish and maintain terminal facilities for the operation of said line extending to Madison, Kansas, in connection with its aforesaid main line of road, and at said town of Madison it has been likewise compelled to establish and maintain terminal facilities for the operation of said Madison Branch; that the railroad service, both freight and passenger, provided by it on the aforesaid Madison Branch, is continuous from the said town of Butler, Missouri, to the said town of Madison, Kansas, and return; that it does not and cannot operate a railway service, either passenger or freight or both combined, on said Madison Branch wholly within the State of Kansas for the reason that it does not have and cannot provide itself with two sets of terminal facilities both within the State of Kansas, but uses and has to use for its eastern terminal facilities those provided and established at the aforesaid town of Butler, Missouri, at which said place it connects with its aforesaid main line of its general system.

Said defendant further says that it would be entirely impracticable to operate passenger train service on said Madison Branch wholly within the State of Kansas for the reason that the operation of lines of railway requires terminal facilities at each end of the line to enable the making of the necessary changes of engines and cars, the changing of engine crews, the coaling of engines, inspection and repair of engines and cars, the building and maintenance of switch tracks and switch yards, and many other like services necessary to be performed at the terminal points of railroad and railroad branch lines.

Said defendant further says that there is no city or town at or near the point at which its Madison Branch line of railway crosses the Missouri and Kansas state line, nor any town or village within many miles of said line, but on the contrary said defendant avers that the point of crossing of said state line and for many miles westward thereof within the State of Kansas is an open prairie farming country.

Said defendant further says that the establishment and maintenance of the necessary terminal facilities for the operation of
38 said Madison Branch line of railway at any point on or near the aforesaid state line of Missouri and Kansas or at any point westward thereof would involve it in ruinous expense and disorganize its necessary method and plan of operating said Branch line and wholly prevent any practicable and successful method or plan for the operation of said Branch line of railway, either as an independent line or as a part of and in connection with its general railway system.

Said defendant further avers that, as shown by the certificate of incorporation of the Interstate Railroad Company, attached as an exhibit to the alternative writ of mandamus herein, and which said Interstate railway line, as alleged in the alternative writ, is identical with the present Madison Branch and is operated by said defendant, the design and purpose of the incorporation of said Interstate Railroad Company was to construct and operate an interstate railway line in, to, through and between the states of Missouri and Kansas, the Indian Territory and the State of Texas, and was not, as shown by said certificate of incorporation, to operate a line of railway wholly within the State of Kansas.

Said defendant says, as shown by the facts above averred, that its said line of railway from Butler, Missouri, to Madison, Kansas, and the traffic and train service thereon, both passenger and freight, is, and from the necessities of the case must be and continue to be, wholly interstate in character; wherefore defendant denies that the Board of Railroad Commissioners of the State of Kansas had any authority or jurisdiction to make the order averred and set forth in the alternative writ of mandamus herein, and respectfully denies that this, the Supreme Court of the State of Kansas, has any jurisdiction or authority to compel obedience to said order of said Board of Railroad Commissioners, or to compel obedience to any order of its own that might or could be made in the premises.

Second Ground of Defense.

Said defendant, The Missouri Pacific Railway Company, for a second and further answer and ground of defense to the alternative writ of mandamus herein makes all the allegations of its
39 first answer and ground of defense herein a part hereof, and further says, that it is impossible to operate a wholly passenger train service on said Madison Branch line of railway either entirely within the State of Kansas or over the whole length of said line from Butler, Missouri, to Madison, Kansas, without a financial expense to it, the said defendant, far beyond the revenue derivable or possible to be derived therefrom, and that the enforcement against it of the aforesaid order of the Board of Railroad Commissioners, or any like order made by this court, would be at the expense of its revenues derivable from other portions of its railway system in states other than the State of Kansas, and would subject it, the said defendant, to an annual loss of many thousands of dollars, as hereinafter more particularly shown, and would be a confiscation of its revenues and property and would be a deprivation of its property without due process of law and a denial to it of the equal protection of the laws as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

Said defendant, in more particular explanation of the matters and things last averred, says that prior to the 1st day of July, 1903, it had been maintaining a mixed passenger and freight train service, and no other, on said Madison Branch line between Butler, Missouri, and Madison, Kansas, but on or about said July 1st, 1903, it established thereon a separate passenger train service and continued

the same up to April 30th, 1905, since which time said separate passenger train service has been abandoned and return made to a mixed passenger and freight train service. Said defendant says that during said period of separate passenger train service, to wit, from July 1st, 1903, to April 30th, 1905, its total net receipts from ticket sales, cash fares, excess baggage charges, the carrying of the United States mail, and the carrying of express matter between the said towns of Butler, Missouri, and Madison, Kansas, and return, where only $41,174.58, for the furnishing of which passenger train service it necessarily expended during said time the sum of $124,166.84, making for it a deficit caused by the operation of said passenger train service
40 on said Branch during said period of twenty-two months of $82,995.26.

And said defendant further says that during the period last named, to wit, from July 1st, 1903, to April 30th, 1905, its total receipts from ticket sales, cash fares, excess baggage charges, the carrying of the United States mail, and the carrying of express matter on said Madison Branch from the Kansas state line westward to Madison, Kansas, and return to said state line, were $34,835.50, and that it necessarily expended during said time in the maintenance of said separate passenger service between said Kansas state line and Madison, Kansas, and return, the sum of $105,057.56, leaving a deficit in the operation of said separate passenger train service on said Branch line within the State of Kansas during said time of $70,222.06.

Said defendant further says that the period of the maintenance of said separate passenger train service above named covered the period of the Louisiana Purchase Exposition held at St. Louis, Missouri, during which time the passenger travel over its said Madison Branch line was greatest on account of the travel to and from said Louisiana Purchase Exposition.

Said defendant further avers that on account of the exceedingly great loss to which it was subjected during the period above named by its maintenance of said separate passenger train service on said Madison Branch line it abandoned the same on April 30th, 1905, and on May 1st of said year resumed mixed train service on said Branch.

Said defendant further says that after the restoration or return to said mixed train service from May 1st, 1905, to March 31st, 1906, it derived from ticket sales, cash fares, excess baggage charges, carrying the United States mail and carrying express matter over said Branch line from Butler, Missouri, to Madison, Kansas, and return, being a period of eleven months, a total of only $16,919.61, and during said period necessarily expended in the maintenance of the passenger portion of its said business between said named points the sum of $37,059.77, leaving a deficit in passenger revenues for said time for said line of $20,140.13.

Said defendant further says that during the period last
41 above named, to wit, from May 1st, 1905, to March 31st, 1906, the revenues derived on said Madison Branch line within the State of Kansas from ticket sales, cash fares, excess baggage charges, carrying the United States mail and carrying express matter were only $14,376.24, and the necessary expenses of the maintenance of

the passenger service on said line within the State of Kansas for said period were $31,356.27, leaving a deficit in its revenues for the maintenance of said passenger service in said mixed freight and passenger train service during the period of time mentioned and over the portion of the line stated of $16,980.03.

Said defendant further says that the operation of the freight service on that portion of the Madison Branch line within the State of Kansas for the period last named, to wit, eleven months, from May 1", 1905, to March 31", 1906, necessarily cost the said defendant the sum of $95,002.35, while the revenue from said freight service during said time over said Kansas portion of said line was only $22,369.39, leaving a deficit in revenues derived from said freight service of $72,632.96.

Said defendant further says that the operation of said Madison Branch line of railway now is and for many years last past has been not only wholly without any remuneration to it whatever above the cost of its operation, but has involved it annually in deficits in its revenues of many thousands of dollars, and there is nothing in the traffic situation and prospects of said line to justify a belief that the same can ever be operated without a large annual financial loss above the earnings derivable therefrom.

Defendant further says that the country through which its said line of railway runs is a purely agricultural region furnishing no travel or traffic excepting that incident to the ordinary farming country, and that in addition to defendant's said Branch line of railway seven rival and competing lines of railway intersect it between the aforesaid terminal points of Madison, Kansas, and Butler, Missouri, making an average of one rival and competing line of railway to every fifteen miles of its said Branch line.

42 Said defendant further says that the maintenance of passenger train service apart from freight train service would involve it in far greater expense than the maintenance of a mixed passenger and freight train service and would, therefore, to still greater extent compel it to divert its revenues derived from other lines and parts of its system without the State of Kansas to the maintenance of said separate passenger train service in the State of Kansas and would to the extent of the additional cost of said separate passenger train service be a confiscation of its property, a deprivation of its property without due process of law and a denial to it of the equal protection of the laws guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

Third Ground of Defense.

Said defendant, further answering the alternative writ of mandamus herein, and for a third ground of defense thereto, makes all the allegations of its first and second grounds of defense herein parts hereof, and further says, that after the making of the order of the Board of Railroad Commissioners requiring the installation of a motor car passenger service, or, in the alternative, a return to the separate and ordinary steam passenger train service on said Madison Branch line, it commenced the construction of a motor car for the

purpose of experimenting with its use on said Branch line of railway to determine its practicability as to cost of operation and adaptation to the purposes of passenger train service and since said time has diligently endeavored to complete and perfect said motor car for said experimental purposes and believes that the same can be made ready for said experimental use by the close of the month of July, 1906.

And said defendant further says that the practical utility of motor car service on railway tracks is, in the light of experiments thus far made, as yet entirely problematical, but it is the defendant's design to test the practicability of said character of service on its said Madison Branch line as soon as the same can be done, and is also its design to furnish said motor car service for separate passenger
43 traffic if the cost of said service can be brought within the passenger service cost of the mixed train service which it now furnishes and if said motor car service can be successfully operated from the stand-points of utility and safety and other considerations necessary to be taken into account.

Wherefore said defendant, having made return of the alternative writ of mandamus issued against it, and having made this, its answer, to said writ, prays that it may be allowed to go hence without day, and that it have judgment for its costs herein.

WAGGENER, DOSTER & ORR,
Attorneys for the Defendant.

Endorsed: No. 14999. Supreme Court of Kansas. State, *el rel.*, Carr W. Taylor, and C. C. Coleman, Attorney General, *v.* The Missouri Pacific Railway Company. Answer. Waggener, Doster & Orr, For Defendant. Filed Jun- 23 1906. D. A. Valentine Clerk Supreme Court.

44 And afterwards, on the 1st day of July 1906, there was filed in the office of the clerk of the supreme court of the state of Kansas, the motion of the plaintiff for judgment on the pleadings, which motion is in words and figures as follows, to-wit:

45 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for The Board of Railroad Commissioners, and C. C. COLEMAN, Attorney General of Kansas, Petitioner,

vs.

THE MISSOURI, PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

Motion for Judgment.

Comes now your petitioner and moves the court for judgment on the pleadings in the above cause for the following reasons to wit:

1. For the reason that defendant's answer does not state facts sufficient to constitute a defense against the allegations set forth in the alternative writ of mandamus heretofore issued herein.

2. For the further reason that all the allegations set forth in defendant's answer as a defense to petitioner's action are, under the laws of the state of Kansas, barred from use as a defense; that the allegations of said answer admit, inferentially, that the defense pleaded is barred under said laws; that said answer does not deny that the said order of the Board of Railroad Commissioners became a final order and that no action was commenced by the defendant within thirty days after said order was made by said Board to vacate same as provided by law, as alleged in plaintiff's petition, that therefore petitioner is entitled to judgment upon the pleadings herein.

Wherefore petitioner prays that a peremptory writ of mandamus be issued compelling the said defendant to put into effect the said order of the Board of Railroad Commissioners, and for such other relief as may be just.

CARR W. TAYLOR.
C. C. COLEMAN.
Attorneys for Petitioner.

(Endorsed:) No. 14,999. Supreme Court of Kansas. State *ex rel.*, etc., vs. Mo. Pac. Ry. Co. Motion. Filed July 1st, 1906. D. A. Valentine, Clerk Supreme Court.

46 Be it further remembered, that afterwards on the 3rd day of July 1906, the same being one of the regular judicial days of the July 1906 term of the supreme court of the state of Kansas, said court being in session at its court room in the city of Topeka, the following proceeding was had and remains of record in words and figures as follows, to-wit:

47–51 *Journal Entry Appointing Referee.*

In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.*, Plaintiff,
vs.
THE MO. PAC. RLY. CO., Defendant.

Now comes Carr W. Taylor, attorney for the State Board of Railroad Commissioners and Frank Doster one of the attorneys for the Missouri Pacific Railway, the defendant, herein, and present their stipulation and agreement for the appointment of a referee to take testimony in this cause; and thereupon in pursuance of said agreement it is ordered that T. F. Garver of Topeka Kansas be, and he is hereby appointed by the court, referee to take the evidence in this cause and to make findings of fact and conclusions of law therefrom, and that he be invested with all the powers of a referee in this court for said purpose; that said referee is ordered and directed, after taking the oath, to take the evidence in said action at such times and places as shall be most convenient to him and to the said parties, the decision of said referee as to the time and place being

final and upon reasonable notice to both parties. That said referee shall be empowered to summon witnesses administer oaths, and compel the compliance with all proper orders in connection with the taking of said testimony.

* * * * * * *

52 And afterwards, on the 27th day of May A. D. 1907, there was filed in the office of the clerk of the supreme court of the state of Kansas The Report of the referee, the testimony introduced before him, and his findings of fact and conclusions of law therefrom, which report, testimony and findings are in words and figures as follows, to-wit:

53 14999.

In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* Attorney General, Plaintiff,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY, Defendant.

Report of Referee.

Pursuant to the order of reference made in the above entitled case and my appointment as referee, I beg leave to report to the court that having duly qualified, in company with the attorneys for the respective parties, I went to Saint Louis, Missouri, where testimony was taken on July 18th and 19th, 1906, on behalf of the defendant, and afterwards at the same place on August 8th and 9th on behalf of the plaintiff. On August 6th and 7th, 1906, testimony was taken also on behalf of the plaintiff at Mound City, Kansas. That thereafter several hearings were had in the city of Topeka.

The evidence introduced consisted of the following:

1. Oral testimony of John Nugent and six other witnesses, called on behalf of the defendant, including Exhibits "A" to "I" inclusive.

2. The testimony of witnesses taken at Mound City on behalf of the plaintiff.

3. The testimony taken at Saint Louis, where E. M. Curtis and six other witnesses were examined on behalf of the plaintiff and John M. St. Clair and M. L. Byers on behalf of the defendant, with Exhibits "A" to "I" inclusive attached.

4. Exhibit "G," unattached to any testimony, consisting of detailed monthly statement from May 1, 1905, to April 1, 1906, showing the amounts of money received from all freight shipments passing over the Madison line in that time.

5. Statements and copies from the county records in Linn, Anderson, Coffey and Greenwood counties, showing bonds voted to The

Inter-State Railroad Company and the Saint Louis and
54 Emporia Railway Company. Also sworn statements of crops and manufactured goods that might contribute to the traffic on this line.

6. Affidavits and statements regarding motor cars and their operation.

7. The sworn report of the Missouri Pacific Railway Company made to the Board of Railroad Commissioners of Kansas for the year ending June 30, 1906.

8. The Nineteenth Report of the Board of Railroad Commissioners of the State of Kansas for the years ending November 30th, 1905, and November 30, 1906.

9. Time tables of the Missouri Pacific Railway Company for the years 1903, 1904, 1905 and 1906.

All the testimony and evidence introduced before me is herewith returned, together with my special findings of facts and conclusions of law thereon.

In the taking of testimony at Saint Louis and Mound City seven days' time *were* consumed, and the necessary actual expenses of the referee were $40.05, which have been paid by the state.

The stenographer's charges for taking testimony at Mound City and paid by the state were $——.

In the examination of the testimony and the consideration of the case the referee necessarily spent about one week.

For his services he asks the court to allow such sum as it may deem proper and reasonable.

T. F. GARVER, *Referee.*

Endorsed: No. 14999. In the Supreme Court of the State of Kansas. The State of Kansas *ex rel.*, Plaintiff, *vs.* The Missouri Pacific Railway Company, Defendant. Report of Referee. T. F. Garver, Topeka, Kansas, Referee. Filed May 27, 1907. D. A. Valentine, Clerk Supreme Court.

55 STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, &C.,
vs.
THE MISSOURI PACIFIC RAILWAY COMPANY.

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56 In the Supreme Court of the State of Kansas.

No. —.

STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for Board of Railroad Commissioners, and C. C. COLEMAN, Attorney-General of Kansas, Plaintiffs,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY, Defendant.

Testimony taken in the Legal Department of the Missouri Pacific Railway Company, in the Missouri Pacific Railway Building, corner of Seventh and Market Streets, in the City of St. Louis, State of Missouri, on the 18th day of July, 1906, before T. F. Garver, Referee, appointed by the Supreme Court of the State of Kansas to take testimony in the above entitled cause.

Present: Carr W. Taylor, Esq., counsel for plaintiffs, and Frank Doster, Esq., counsel for defendant.

Testimony on Behalf of Defendant.

JOHN NUGENT, sworn on behalf of defendant, testifies as follows:

Direct examination by Mr. DOSTER:

Q. What is your name, residence and occupation?

A. John Nugent, residence 6223 Clifton Avenue, St. Louis, Mo., Chief Statistician of the Missouri Pacific Railway Co.

Q. In what department of the Missouri Pacific service, and under what general officers of the company, are you engaged?

A. The statistical department of the accounting department.

Q. Is that a sub-department of the auditor's department?

57 A. Yes sir.

Q. How long have you been a statistician of the Missouri Pacific Railway Co.?

A. Since October 2d, 1901.

Q. Previous to that time what had been your work?

A. Well, previous to that time for about a year and a half I was chief clerk of the same department that Mr. Johnson has now, what we call the accounting division department, immediately previous about a year and a half.

Q. How many years of service have you had in the accounting or statistical department of the Missouri Pacific Railway Co., or any other company?

A. Since December 22d, 1892, altogether with the Missouri Pacific Railway Co. right here in St. Louis.

Q. As chief of the statistical department what are your duties, state them in a general way?

A. To supervise the compilation of statistics or data furnished from our freight accounting department and passenger accounting

department, furnishing special statements when called for by various officers of the company, and to others, outsiders, when requested, sometimes to outsiders, some Board of Trade is what I mean by that, the city might ask for statistics and I am instructed to get them up and give them to them.

Q. Are you familiar with the books and records of the Missouri Pacific Railway Co.?

A. In a general way, I wouldn't say thoroughly familiar.

Q. What I mean is are you familiar with the books and records from which the statistical matter you have spoken of is compiled?

A. Yes sir.

Q. As statistician for your company are you charged with the duty of knowing or compiling the accounts of revenues and expenses in the operation of the various lines of the system?

58 A. Not expenses, the compilation of revenue, apportioning to each line, do you mean?

Q. I ask the general question whether you are familiar with the books and records showing revenue and expenses, but you say not expenses?

A. I have nothing to do with the expenses.

Q. You have with revenue?

A. Yes sir.

Q. Have you had as statistician to know and to do with accounts of the revenues received since you became chief statistician in 1901?

A. Yes sir. I have had to compile them, see that they are compiled, supervise the compiling of them, but not the apportioning between lines, that is determining what is to be given to each line, I have nothing to do with the division of that revenue, simply compile it from data furnished by other departments.

Q. In the compilation of statistics of revenues you- information comes from other departments?

A. It does.

Q. What departments?

A. The freight and passenger accounting departments.

Q. In what form are the accounts kept by the freight and passenger departments kept?

A. The freight is kept on journals, and the division of revenue between properties is made on what we call division of earnings sheets, the passenger statistics are compiled from the agents' monthly reports.

Q. Well, those reports and that data generally are in the form of books kept by the company, are they?

A. Well, the passenger statistics, as I said, are taken right from the agents' reports.

Q. The agents' reports are recorded in books?

A. I think they are.

59 Q. What I mean to ask is are they kept in a permanent form so as to be accessible as sources of information?

A. I suppose that would depend on the agent and his methods, one agent might have a very good permanent record and another one not so good.

Q. I am speaking of what is contained in this office here?

A. I am speaking of the agent outside, I understand they have an impression copy of the reports of that actually, perhaps not in book form, but the impression is in book form.

Q. The reports are transmitted to the general offices here, are they?

A. Yes sir.

Q. I ask now what is contained in them here?

A. After we do our compiling they are returned to our passenger accounting department for filing.

Q. They are filed and preserved in this office?

A. Yes sir.

Q. In a permanent form?

A. Yes sir.

Q. And I understand you to say that in compiling statistics of revenues those reports thus made up and preserved are your sources of information?

A. That is correct.

Q. Do you know of a line of the Missouri Pacific System called the Madison branch?

A. Yes sir.

Q. That extends from Butler, Missouri, to Madison, Kansas, does it?

A. We understand the Madison line to be from Monticth Junction to Madison, Kansas, properly speaking.

Q. How far is that from Butler, Missouri?

A. The trains run from Butler to Madison.

Q. What is the distance between the two points, that is Butler and Monticth?

Mr. TAYLOR: We object to the introduction of any testi-
60 mony in this case on the part of the defense for the reason that the defense pleaded in the answer to the alternative writ in this case is barred by the statute of limitations, the defendant having lost the right to defend in this case by a failure to institute an action to vacate the order of the Board of Railroad Commissioners ordering passenger service installed upon what is known as the Madison branch line of railroad within the thirty days provided by law for the defendants to institute actions to vacate orders of the Board of Railroad Commissioners.

The REFEREE: Understanding that this question is reserved for consideration by the Supreme Court itself, and that I am simply to hear and pass upon the facts, the objection will be overruled and the testimony heard subject to the consideration of the objection by the Supreme Court.

(Question read.)

A. I don't know the exact distance, something between three and four miles, I think.

By Mr. DOSTER:

Q. The branch then for operating service extends from Monteith to Madison, does it?

A. I don't understand it that way, for operating purposes I understand it to be from Butler to Madison, but properly speaking what we call the Madison line I understand to be from Madison to Monteith Junction.

Q. Then it is just the other way from what I said, for operating purposes it extends from Butler to Madison?

A. Yes sir.

Q. Did you ever compile statistics of revenues from the Madison branch line?

A. Yes sir.

Q. Covering what period of time?

A. The first statement was from July 1st, 1903, to April 30th, 1905, 22 months; the second statement from May 1st, 1905, to March 31st, 1906, eleven months.

Q. Would you recognize the tables prepared or compiled by
61 you if you were to see them?

A. I would.

Q. You may examine these tables that I show you and tell us what they are and who compiled them?

A. This is the first statement referred to above covering the 22 months.

Q. But I ask what are those papers and who compiled them?

A. This is a statement of earnings and expenses of passenger business on the Madison line of the Kansas & Colorado Pacific Railway from Madison, Kansas, to Monticth Junction, Mo., during the period from July 1st, 1903, to April 30th, 1905, approximated. This statement was prepared for the purpose of arriving at a basis for determining the Kansas proportion of the earnings of that line because of the latter not being operated separate from the other portion. This is a statement of the earnings and expenses of passenger business of that portion of the Madison Branch of the Kansas & Colorado Pacific Railway from Madison Kansas to the Kansas state line during the period of July 1st, 1903, to April 30th, 1905, approximated.

Q. Now, tell us who compiled those?

A. I compiled both those statements so far as revenue is concerned, that is they were compiled by my clerks under my supervision.

Q. I notice that the statements are of revenues and expenses approximated, what is meant by approximated?

A. It is meant that this line's earnings were not apportioned in the same manner as if it had been a separate corporate property, it being a part of the Kansas & Colorado Pacific Railway, and its earnings are not kept separate from other parts of that railway.

Q. Was it meant by that that the revenues received as noted on those sheets were estimated or proportioned as between that branch and other portions of the Kansas and Colorado Pacific System?

A. The latter is correct, that is proportioned between this
62 and other parts of the Kansas & Colorado Pacific System, not to say estimated.

Q. Proportioned between that branch and other portions of the Kansas & Colorado Pacific line?

A. Other portions of the Missouri Pacific system, I should say.

Q. In making that apportionment or proportion what basis or plan was employed?

A. First, I might say, is ticket sales, excess of baggage, &c., earnings of the first statement referred to, that is from Madison, Kansas, to Monteith Junction, Mo., were arrived at by taking the average earnings per passenger per mile of the Kansas & Colorado Pacific Railway and applying that rate to the passenger's one mile of that line between Monteith Junction and Madison, Kansas. Then the Kansas proportion of these earnings was arrived at on a rate mileage basis, that is the Kansas proportion was such proportion as the Kansas track mileage of that line was to the total track mileage of that line.

By Mr. TAYLOR:

Q. That is you mean of the Kansas & Colorado Pacific?

A. No sir, of the Madison line.

By Mr. DOSTER:

Q. Explain again more clearly, avoiding technical terms as far as possible, your method of arriving at the result shown by those tables?

A. During the 22 months from July 1st, 1903, to April 30th, 1905, the Madison line from Monteith Junction, Mo. to Madison, Kansas, was handled as a separate accounting division, and our record showed the passengers carried one mile over that accounting division each month separately of the 22 months; to this passenger's one mile was applied the average earnings per passenger per mile of the entire Kansas & Colorado Pacific Railway, of which
63 this line was a part, to determine the earnings of this line.

Q. By that do you mean to say that you took the passenger earnings per mile on the Madison branch to be the same as the passenger earnings per mile on the Kansas & Colorado Pacific line?

A. I do.

Q. Then you proportioned the passenger earnings on the Madison branch from Monteith to Madison, and from the state line to Madison, on a mileage basis, did you?

A. On a track mileage basis, yes sir, I did.

Q. What lines are included in the Kansas & Colorado Pacific?

A. I couldn't say off hand, I could name a few, I think there are twelve separate lines. The names of the lines, the terminal points and the mileage are shown in the company's official list of stations and agents on page three, which is as follows:

Main Line..Western Division....Ottawa Conn., Kas., to Pueblo Union Depot Conn Colo.....	541.74
Council Grove Connection....Council Grove Spur Jct. Kas., to M. K. & T. Ry. Conn., Kas.....	.48
Great Bend Branch....Gt. Bend Bch. Jct. Kas. to Great Bend, Kas.	10.01
Salina Loop....Gypsum City Conn., Kas. to Marquette Connection Kas.	42.41

Madison Line....Monteith Jct., Mo., to St. L. & E. Jct. Kas.	74.31
Madison Line....Interstate Jct. Kas., to Madison, Kas....	27.12
Fort Scott, Wichita & West Line Ft. Scott Conn.	
64 Kas. to In. Ter. Line	244.45
McPherson Branch....Eldorado Jct., Kas. to McPherson, Kas.	62.40
Wichita & Geneseo Line....Wichita & Colorado Jct. Kas. to S. S. & E. P. Jct., Kas.	81.57
Main Line..Eastern Division....Chetopa, Kas., to Larned Kas.	273.04
Grouse Creek Division....Dexter Jct., Kas., to Ark. City, Kas.	25.07
Kansas, Nebraska & Dakota Div....Ft. Scott, Kas., to Topeka Kas.	131.00

Q. Had you, in the preparation of the tables in question, information that enabled you to determine that the proportion of earnings per passenger mile that you assumed, was correct?

A. Our records showed these various rates of the Kansas & Colorado Pacific Railway, of which I speak above, as having applied in making up this statement for the Madison line.

Q. The Kansas & Colorado Pacific includes the line from Ottawa, Kansas, to Pueblo, isn't that a part of the main line from Kansas City to Pueblo?

A. Yes sir.

Q. Were not the passenger earnings per mile on that line greater than the passenger earnings per mile on the Madison Branch?

A. I couldn't state positively, the local rate per passenger per mile is greater on the Colorado portion of that line, than it is on the Madison line, I believe it to be four cents in Colorado.

Q. You mean the local rate is greater in Colorado?

A. Yes sir, the local rate.

Q. What I mean to ask is, isn't the travel on the main line from Ottawa, Kansas, to Pueblo, greater than on the Madison branch and consequently the earnings per passenger per train mile
65 greater?

A. Yes, per train mile, but don't understand that I have used train mile as a basis here, I didn't speak of train mile, I spoke of passenger per mile.

Q. The basis used was the earnings per passenger mile, you say?

A. Yes sir.

Q. And not the earnings per train mile?

A. That is right.

Q. Now, by applying the receipts per passenger mile from the Kansas & Colorado Pacific division to the Madison branch can you not and did you not ascertain by exact figures and not by approximation, the earnings of the Madison branch?

A. I have no means of knowing that I did or did not, if I did arrive at the actual earnings of the Madison line in that way it was purely accidental; I can explain that if you don't understand it.

Q. I don't understand it, you may explain?

A. You see the Madison line is a part of twelve other lines, you might say, of the Kansas & Colorado Pacific Railway which at one time embraced the Madison line and eleven others. During this 22 months our earnings were not set aside for each of these properties as they were in years past, and we had to approximate the earnings of the Madison line by taking the Kansas & Colorado Pacific Railway, its earnings per passenger mile, and applying them to the passenger per mile on that division, but we didn't have the earnings for an accounting division, we had statistics, by that I mean tonnage and passengers and the distance they travelled, but not the earnings. We also had expenses but not earnings—that is probably a feature that you have not understood all along.

Mr. Taylor: That is the way I understood it all along.

The Witness: The earnings were not apportioned between the accounting divisions, but the expenses and statistics were. As we were trying to get the earnings for the line we had to take—

66 I don't say we had to, but we did take the Kansas & Colorado Pacific Railway Co.'s earnings per passenger per mile and applied them to that one mile.

By Mr. Doster:

Q. Knowing the number of passengers you carried one mile on the Madison Branch why could you not tell exactly the earnings of the Madison branch of passenger service?

A. Because of the various rates, local, proportion of foreign, excursion, &c., the average could not be determined.

Q. If the fares had all been the same, three cents, for instance, then you could?

A. Yes, sir, if they had all been at any one rate we could have determined it very easily.

Q. Among the items noted on these tables under the head of passenger earnings is United States Mail earnings, what basis did you employ in ascertaining the mail earnings, credited to the Madison Branch?

A. The United States Government, as I understand it, pays our company a stated sum for carrying the mails between Madison, Kansas, and Butler, Missouri, that being the train run; on the basis of track mileage the Madison lines proportion was arrived at, the entire Madison line's proportion was arrived at, and again on the basis of track mileage the Kansas proportion was arrived at. I am explaining how I got the items for the statement, we use track mileage as a basis for determining the Madison line from Madison to Monteith Junction; then again on the basis of mileage the Kansas proportion was determined, approximately eighty-five per cent was the Kansas proportion, so that it might be said that these earnings are actual earnings, not approximated.

Q. What basis was employed in ascertaining the express earnings?

A. There is a letter attached that explains that. During a

67 certain period of twelve months, I think, in which the Kansas & Colorado Pacific Railway was composed of these twelve

lines above spoken of, the Madison line's proportion of express earnings of the entire twelve — was 4.74 per cent.; that, I think, was in the latter part of 1889 and the forepart of 1890. I applied that same percentage to the Kansas & Colorado Pacific earnings of these 22 months, each month separately.

By the REFEREE:

Q. Do you mean 1889 and 1890 or 1899 and 1900?

A. I think 1889 and 1890, the latter part of 1889 and 1890 I took them because the records were more convenient, we had to go down in our basement and get them out, we took twelve months, I was not instructed to take any particular twelve months, that is near the last of the period when the twelve lines were separate.

By Mr. DOSTER:

Q. Well, in your judgment, did that produce an accurate result?

A. I wouldn't say accurate, in my judgment I would say that it credited the Madison line and the Kansas portion of the Madison line with more than it would have had — it been possible for the actual earnings to be arrived at. I say this because I don't believe the Madison line has increased in a commercial way in as great a ratio as the entire Kansas & Colorado Pacific Railway.

Plaintiff's counsel states that he objects to the statement of the beliefs of the witness.

Q. Is there anything further that you can state by way of explanation or verification of the accuracy of these tables covering the twenty-two months period in question?

A. Yes sir, at the making of these statements, it being the first of the kind I had ever been called upon to prepare, I was not aware that our passenger accounting department regularly made up statements of passenger train earnings. I afterwards found that the earnings of the Madison line as shown by that department's records would, by adding one per cent to cover excess baggage, which is understood in the accounting department to be a fair per centage, have shown those earnings, for the entire Madison line, to be about $31,000 instead of $24,000, as I have stated there, the Kansas proportion of which would have been approximately $26,000, instead of about $20,000 as shown in the statement.

68

Q. Then do I understand that the reports of passenger receipts plus one per cent. for excess baggage shows the passenger revenue to be about $7,000, greater than the total of this table, and the Kansas proportion of the passenger revenue to be about $6,000 greater than shown by this table?

A. That is correct.

Q. Can you prepare for us, within a very few days, a revised table compiled out of the reports of the passenger earnings so as to show the exact figures?

A. Possibly not the exact figures, but figures which would have appeared in this statement had these reports that I referred to from the passenger accounting department been used.

Q. That is what I refer to; can that be prepared within the next two or three days?

A. Within the next 48 hours easily, I have it by months.

Q. You may do that, and furnish those corrected tables together with these tables that we have been examining you on, and make them parts of your deposition.

A. Very well.

Mr. TAYLOR: I object to the introduction of these tables for the reason that the statement of earnings set forth therein is not accurate, it being merely an estimate based upon earnings of eleven
69 other railroads, some of which earned considerably less money that the Madison branch, and therefore, said statements furnishing no specific or accurate knowledge to the court which would enable it to determine whether or not the installation of the passenger service ordered in by the Board of Railroad Commissioners was confiscatory.

The REFEREE: I will admit the statements in connection with the explanation of the manner in which they are made up, but will state that it not appearing that there is not more direct evidence to show the earnings of this particular line apart from the other lines it does not appear to me at this time that the statements would be entitled to very much weight, but I will receive them for what they may be worth.

By Mr. DOSTER:

Q. You used information derived from records for 1889 and 1890 in giving these express earnings, you used those records as a basis in compiling these tables; have you any more recent information than that which could be used as a basis?

A. No sir, I have nothing later than that. If I would have to do the same thing again I might take a different period back in those days when they were separate corporate parties, but I would have to go about it in the same way so far as I know, unless we would go to the express companies operating over those lines, and I doubt very much if they could furnish such data as that. I don't know of a case where we ever went to the express company for anything of that kind, although it might have been done.

Q. Are you able to state anything further by way of explanation or verification of the correctness of these tables covering this 22 months period?

A. No sir.

Q. The tables introduced in evidence are brought down to
70 April 30th, 1905; do you know whether during that period separate passenger service was maintained in the Madison branch?

A. I understand it was entirely passenger service during that time, not any mixed train service at all.

By Mr. TAYLOR:

Q. Between what dates?

A. Covering those twenty-two months, the date mentioned, the

service on the line was passenger and freight separately, not mixe as was the case later on.

By Mr. DOSTER:

Q. Have you compiled any tables of passenger receipts for th period following April 30th, 1905?

A. I prepared a statement covering 11 months following that dat

Q. Examine these tables that I show you and tell us whether the are the ones prepared by you?

A. I had these statements made up.

Q. Who made them up?

A. You mean by that who actually wrote these statements, or wh supervised them?

Q. Well, both?

A. I take the responsibility of their being correct.

Q. They were made up by clerks under your supervision, wer they?

A. I can't state that just exactly for the reason that we know ou passenger earnings in this statement, as I explained, should hav been gotten in the previous statement——

Q. But whatever data there is on file in the general offices her were compiled and put in the form of those tables under you supervision, were they?

A. Yes sir.

Q. Of course the work done out on the line was not under you supervision, we know that?

A. No sir.

71 Q. In preparing those tables of passenger receipts wha basis was used, how did you arrive at the results shown there?

A. The ticket sales and excess baggage earnings were furnishe by the passenger accounting department covering the train ru between Butler and Madison, and the Madison line's proportion wa determined on the basis of track mileage and the Kansas proportion of the Madison line again determined on the basis of track mileage

Q. The figures of earnings there given are not approximations o earnings per passenger mile on the Kansas & Colorado Pacific applie to the Madison Branch, but they are compilations from the report of passenger earnings sent in by agents, are they?

A. No sir, they are compiled from reports sent in by the con ductors in this case, that is these train earnings we spoke of a while ago that I did not know the existence of, they are compiled from the conductors' collection of tickets and cash from the passengers.

Q. I see that one of these is a table of passenger earnings from Monteith Junction to Madison, and the other of the Kansas portion of the Madison branch, but they are stated in the heading to be approximated; what is meant by approximated?

A. Because the earnings throughout are not actual, the express earnings being estimated as previously explained and in the previous statement.

Q. Is there anything else than the express earnings that is estimated?

A. No sir.

Q. Can either of these tables be revised and made more nearly accurate than they now are so far as their showing of passenger revenue is concerned?

A. Not in any way that I have knowledge of, if I had it to do again I would prepare it in precisely the same manner.

72 Q. What kind of service was maintained on the Madison branch during the 11 months' period shown on these tables?

A. Mixed train service.

Q. That is freight and passenger together?

A. Yes sir, combined freight and passenger.

Q. But these tables show passenger earnings separate from the freight, do they?

A. Yes sir.

Q. Have you compiled any information as to freight earnings during any period on the Madison Branch?

A. I have for the same period covered by this last statement that you refer to, 11 months, May 1st, 1905, to March 31st, 1906, covering precisely the same period as this last statement here.

Q. Have you a summarised statement of freight earnings on the Madison branch during that 11 months' period?

A. I have all the details from which this amount stated in the General Auditor's letter of June 16th was made up.

Q. Do you have it in the form of tables such as we have been examining in respect to passenger earnings?

A. I have it in this statement right here showing it by months and under the head of freight earnings, one item for each month, the details of which I hold.

Q. Have you those details in tabulated form?

A. Yes sir.

Q. Have you got them with you?

A. I have got them in the building here showing how each and every one of these 11 amounts under the head of freight earnings was arrived at.

Q. Do you mean the reports sent in from the line?

A. No sir, I mean we went to our records in the General Auditor's office and abstracted each item of freight in this case passing over the Kansas portion of that line. I didn't think it necessary there to take in the whole Madison line. I abstracted all the freight

73 touching that portion of the road, the Kansas portion of the Madison line, item by item.

Q. You may produce that statement.

By Mr. TAYLOR:

Q. Is that statement made up entirely of local shipments between the stations in Kansas?

A. Of all shipments irrespective of point of origin or destination that move over any part of the Kansas portion of that line and that was all that the Kansas portion could be interested in.

At this point the witness leaves the room to get the statement referred to and returns with the paper.

By Mr. DOSTER:

Q. What is the paper I hand you?

A. It is the details of the freight earnings of the Kansas portion of the Madison line showing the stations between which the freight moved, the entire Missouri Pacific system revenue thereon, with the Kansas percentage thereof inserted, and that proportion shown in dollars and cents.

Q. What is the first page of that?

A. The first page is a recapitulation by months of the earnings accruing to the Kansas portion of the Madison line, drawn off for the purpose of getting the total for the 11 months.

Q. Are those tables accurate statements of the revenue of the Kansas portion of the Madison line for the period mentioned?

A. To the best of my knowledge they are correct.

Q. They show the percentage of the freight earnings credited to the Kansas portion of the Madison branch line; what basis is used in determining that percentage?

A. The miles hauled for each shipment.

Q. The Kansas portion of the Madison branch is credited with a proportion of the revenue from each shipment as that state's
74 mileage bears to the total mileage over which the shipment was made, is it?

A. That state's mileage for each haul, it might be ten miles or one mile haul and sixty miles on another haul; we treat the shipments between two stations separate from the shipments between two other stations; a shipment moving from St. Louis to Leroy would be one percentage to Kansas and to Blue Mound from Madison would be another, but the percentages for both would be based on the number of miles hauled.

Q. On the number of miles that the shipment is hauled in Kansas?

A. Such proportion as it bears to the entire haul from point of origin to destination.

Q. Is that the plan or system of ascertaining percentages that is employed by your company and other railroad companies?

A. So far as I know it is, I believe it to be the most accurate way, earnings may be estimated in some other way, but I can't think of any more accurate way than this because reference has to be made to each and every shipment in this way, so that this cannot be called an estimated statement of freight earnings, it is a correct statement.

Defendant's counsel offers in evidence the tables covering the 22 months' period so far as they relate to passenger earnings, inclusive of excess baggage, mail and express, and same are marked Exhibits A. and B.

Also, the revised or corrected table which the witness is to furnish, so far as it relates to passenger earnings, inclusive of excessive baggage mail and express, and same are marked Exhibits C. and D.

Also the tables of passenger earnings covering the 11 months'

period testified to by the witness, including the items of excess baggage, mail, and express, and same are marked Exhibits E and F.

75 Also, the table of freight earnings covering the 11 months' period testified to by the witness, including the recapitulation being the first page, and same is marked Exhibit G.

Plaintiff's counsel objects to the introduction of each and all of the above mentioned tables for the reason that they were prepared by the statistician as approximate estimates only of the passenger earnings of the Kansas mileage of the Madison branch line of the Missouri Pacific Railway, and as approximate estimates of the freight earnings upon said line, and that they do not purport to be an accurate statement of the earnings of said line; and, for the further reason that the tables showing the passenger earnings from April 30th, 1905 to March 31st, 1906, inclusive, are for earnings based upon a mixed train service and not upon a separate passenger train service upon said line, and, therefore, that said tables do not furnish to the court accurate information upon which the Court can determine whether or not the said order of the Board of Railroad Commissioners ordering defendant to institute a separate passenger train service upon said line is confiscatory; and, for the further reason, that said tables are not the best evidence.

The REFEREE: The objections are overruled except as to Exhibit G., I being of opinion at the present time the objection is made that it has not been shown to be a correct copy of the records, and, as to exhibits A. and B. so far as they concern passenger earnings I do not think that the basis used for ascertaining passenger earnings was the correct basis to determine that question, but they will be admitted for what they are worth.

76 At this point a recess was taken until 2 p. m. at which time the taking of testimony was resumed.

By Mr. DOSTER:

Q. How was the table of freight earnings made up, and by whom, that is with whose assistance?

A. It was made up by various members of the statistical department, clerks there, they went to the division of earnings sheets and drew this off; as there was no weight to be shown they could go to those sheets as those sheets only showed revenue.

Q. What do you mean by "No weight to be shown"?

A. You see we have a weight column there, usually in getting up statistics we have weight as well as revenue; here it is a matter of earning strictly, that allowed us to go to those division of earnings sheets, which showed the stations between which the freight moved and the earnings; on the basis of haul we had percentages placed on those sheets to determine that particular line's proportion.

Q. The data or sources of information used by you were the company's records of accounts that it uses for its purposes in the transaction of its business?

A. Yes sir, there is no approximation in this at all (referring to the last exhibit).

Q. Those division of earnings sheets are made up of reports se
in from the various stations on the various lines, are they?

A. Made up from the tissue copies of the way-bills themselv
made by the agent at the various stations at which the freig
originated.

Q. And when they are received in the St. Louis office they are p
in the form of what you term a division of earnings sheet?

A. Yes sir, first being journalized. I mentioned in the ear
part of my testimony journalizing, in our system of accou
77 ing we journalize our way-bills and from these journals th
data is taken and placed on division of earnings sheets for t
purpose of dividing the earnings between the various properties.

Q. Those journals and division of earnings sheets are large an
columninous documents and papers, are they?

A. Yes sir, the journal opens up sixteen and a half inches. I b
lieve, and probably twenty inches deep, from 200 to 500 pages, an
fifty to sixty of them used every month.

By the REFEREE:

Q. Different volumes, you mean?

A. Fifty to sixty books used each month in journalizing th
freight.

By Mr. DOSTER:

Q. Tell us again from what sources of information you obtaine
your tables of passenger earnings, and in what form the figure
relative to passenger earnings are kept in your general offices here

A. Well, I will have to explain that, it is gotten in one way fo
the first statement and in another way for the 11 months. For th
first 22 months I took the earnings per passenger per mile of the en
tire Kansas & Colorado Pacific Railway and applied them each
month separately to the passengers per mile over that Madison line

Q. I am not inquiring now about the method by which you ar
rived at the result, but the character of the papers and documents and
books from which the information was compiled?

A. Well, our statistical record, permanent record, shows this rate
per passenger per mile for instance.

Q. How many books or volumes were required to be gone into in
order to obtain the information?

A. Just that one record, say, for each calendar year, and went
right to the month first wanted, July, 1903, we had so many
78 for the Kansas and Colorado Pacific, had so many passengers
— carned, and we computed the earnings per passenger mile
in order to get this rate that I speak of right there on our own statis-
tical record.

Q. Back of that book or books what other book or books or sheets
or documents did you have to refer to?

A. Nothing in getting the passenger earnings for that 22 months.

Q. What book or books or records of any kind were used in pre-
paring this book or record which you did use?

A. You might say these journals from which we compile all our

statistical information in the way of freight; the earnings we get in a lump sum, being ledger balances of each corporate property.

Q. What I am trying to get at is, if such be the fact, that a great number, and possibly a great variety of books are used in preparing this final summary that you have given us on these tables?

A. There are not a great variety of books; these journals that I speak of, in which the tissue copies of the way-bills are entered, are what we compile our statistics directly from.

Q. And you first put it in journals?

A. Yes sir.

Q. How many of those journals are there which you were obliged to use in the preparation of these tables?

A. This particular table, I couldn't say, I might have used—you are speaking of freight earnings?

Q. No sir, passenger earnings?

A. We did not handle journals at all in connection with passenger earnings, I thought you were speaking of freight earnings. That 22 months, the passengers per mile were compiled from the agents' monthly reports, those things are statistics, as we call them, against which we apply this aggregate rate.

Q. If you had to compile those tables of passenger earn-
79 ings right here before us on this hearing, and had to bring here all the sources of information used by you in making the compilation, what would you have to bring here, how many and what character?

A. For that 22 months I would have to get those agents' monthly reports.

Q. How many volumes or books would you have to bring in?

A. As many as sold tickets over that line and that would be hard to say; it would not necessarily be just the report for each station on that line, we might sell St. Louis over that line, and the Kansas City agent might sell them, and we would have these reports, but it would be various month-ly reports.

By the REFEREE:

Q. Of the entire Kansas & Colorado Pacific System?

A. Such as sold tickets over that territory.

By Mr. DOSTER:

Q. You probably would have to bring in several hundred volumes?

A. Yes sir, several reports, probably, for twenty-two months—this is a gues- you might say—probably three or four thousand reports; they not only sell tickets to those points but beyond them; it might be 5,000 reports would have to be handled.

Q. Those reports are entered on journals, as I understand you to say?

A. No sir, I got mixed there on the freight feature of that, the journals are strictly a freight proposition. Perhaps I am misleading you in this, for those 22 months we did not figure out the passenger train earnings as we did the 11 months following, we got it in the

short cut method I told you of, we had statistics originally made up from conductors' reports.

Q. I am not caring about that now, I want to establish the number of volumes or the number of records from which this information was compiled?

A. Well, I don't think I missed the number very much, no
80 doubt three or four thousand separate reports for the 22 months easily would have to be handled over again to get those figures from first to last.

Plaintiff's counsel states that the State will not insist upon bringing in the original documents, &c., but only insist that the abstracts submitted from those records be shown to be correct.

Q. What do you say as to the correctness in matters of arithmetical calculation of these tables of earnings which you have furnished us?

A. What is my honest belief of their correctness?

Q. Yes?

A. I believe they are reasonably correct, it would be foolish for me to say that I believe every calculation was correct, any sane man knows better than that, a man may make a mistake of extension, but he certainly is not going to make them all on one side of the book, we consider them correct. If I were to criticise the two statements furnished covering the ticket sales and excess baggage earnings it would only be on account of the manner in which those earnings were arrived at for the 22 months in the first instance, that is I mean that they should be now made up from the train earnings statements, from the passenger accounting department.

Q. That you say will be corrected in this revised statement that you will furnish?

A. Yes sir, and that can be very easily corrected, I have the items by the month.

Q. In the preparation of the statement of passenger earnings you have applied the revenue per passenger mile on the Kansas & Colorado Pacific to the Madison branch line; is there any other way of arriving at the passenger earnings of the Madison branch than in that way?

A. That I admit is incorrect, by applying that rate as I did——

Q. I didn't make my question plain. I meant in the ab-
81 sence of the report of actual passenger earnings, is there any other way of arriving at the result than in the way that you first stated?

A. The train earnings statement compiled in our passenger accounting department, that is possibly a more reliable way because it is made up from the collection of tickets and cash of the conductors.

Q. What I meant to ask, and perhaps I was awkward in putting my question, was whether in the absence of that actual statement of passenger earnings there was any other way of arriving at the result?

A. No, I do not know of any other way.

Q. You have approximated to the mail earnings and the express earnings?

A. Not the mail earnings, the United States Mail earnings are actual, the Government pays the Missouri Pacific Railway Co. so much for carrying the mails yearly under contract under each train run, and on that particular train between Butler and Madison, in getting Madison's proportion, I took the Madison's mileage, in getting Kansas proportion I took the Kansas proportion, in that I was as near actual as it could be done.

Q. I will confine the question to the express earnings then; is there any other way of arriving at a more accurate knowledge of the express earnings than the way you have given us?

A. None that I have ever heard of. I have been told to get the exact express earnings of a branch like that, any branch that is part of a corporate property, you would have to go to the express company, and I don't mean by that that they could furnish it, but certainly we could not. I was unable to find in the accounting department any way of getting the express earnings except by pro-rating them, which I explained, and in doing that I believe I have
82 set aside more—you asked me what I thought of that, I believe I have set aside more to the Madison line and consequently the Kansas part of it than it is really entitled to because I do not believe that line has increased in business in the same ratio that the entire Kansas & Colorado Pacific has, it is not a main line, and therefore I think the express earnings are in excess of the proper amount for the entire 33 months.

Q. Are you able to state in a general way the amount of passenger and freight earnings on the Madison branch for, say, three or five years preceding the beginning of the compilation of these tables?

A. No sir, I am not.

Q. Have you any knowledge of the subject sufficient to enable you to express a judgment as to whether during the five years preceding the time covered by those tables, the earnings, freight and passenger, were any greater or any less than as shown by the tables?

A. No, we have no means of knowing that. Possibly for a year and a half preceding July 1st, 1903, we could get statistics that might indicate whether the business was more or less per month than for the 22 months statement in this way, we might take each station on that branch, for instance, and take the revenue on freight forwarded and the revenue on freight received, that would be from a book that we have showing the revenue from each station of forwarded freight and received freight separately, and find what proportion that was of the whole Missouri Pacific system earnings, that is for this 22 months, and apply it to that 18 months, but that would be a rough estimate, because the length of haul and character of freight and all that might be entirely different.

Q. Have you any judgment as to whether that branch
83 line was, preceding the 22 months period in question, in any more or in any less prosperous condition than during the 22 months or during the 11 months?

A. I have no means of knowin- except in a general way, I might

express an opinion generally, and that would be in the absence of anything definite, that this statement would show as favorably for earnings as any statement we could get up for any prior time.

Q. Do you mean to say that your opinion is that these statements that you have given us will show as favorable a condition in the matter of revenue as during any preceding time?

A. Yes sir, I honestly believe that, for any preceding time of 22 months, a similar period, I do not know of any reason why it should show less revenue.

Cross-examination by Mr. TAYLOR:

Q. This morning as you were testifying as to the history of the Kansas & Colorado Pacific Railway incorporated in the 18th report of the Board of Railroad Commissioners of the State of Kansas for the years 1903 and '4, your testimony contained a statement as to the number of railroads operated under the name of the Kansas & Colorado Pacific Railway; is that statement approximately correct, or is it a correct statement of all the railroads embraced under the name of the Kansas & Colorado Pacific Railway Co.?

A. I should say that is the group that constitutes the Kansas & Colorado Pacific Railway Co. to date.

Q. I ask you if there are any other railroads in Kansas owned and operated by the Missouri Pacific Railway Co. that are not included in this list on page 50 of this book?

A. Yes, there are Missouri Pacific lines.

Q. Can you tell where they are or what they are?

84 A. They are not altogether Kansas lines, one starting, for instance, near Kansas City at what we call the Kansas City Southwest Junction, run-ing down, I think, to Paola, originally called the Kansas City and Southwestern Railway, to my recollection, and another line leading out of Paola south to either Leroy or Yates Center, called the Kansas City and Arizona, at least what we call our K. & A. division, both Missouri Pacific properties and not Kansas & Colorado Pacific at all; then what we call the Leroy & Caney Valley Air-line running from Roper, Kansas to Peru Junction; then there is the Ft. Scott and Eastern division which starts, I think, at Rich Hill, Missouri, and runs to Ft. Scott, and from Ft. Scott to Cornell; then there is the Nevada and Linden division, that is partly in Kansas, running from Nassau Junction near Nevada to Chetopa Kansas, a distance of 76 miles. That is all the Missouri Pacific that I can recall. There is an independent line called the Kanopolis and Kansas Central running from Genesco to Kanopolis, Kansas.

Q. Is there not a central branch that you have not named?

A. Yes sir, I am leading in that direction now. There is another little line in there, a separate independent property, called the Kansas & Southwestern, running from Iuka Junction to Iuka, Kansas, a distance of twenty miles; then the Central Branch railway, there are two divisions of it, running from Atchison Kansas, to Alton and Lenora, and one or two small branches, the Washington Branch, I think, I don't remember really what they are—it

is the Jewell branch, I believe that practically takes in the entire Central Branch; then there is another independent line which I overlooked, the Rooks County Railroad, which runs from Alton to Stockton, that is a distance of eighteen miles and it is strictly an
85 independent line. I believe those are about all.

Q. Now all of the lines operating under the name of the Kansas & Colorado Pacific Railway Co. are grouped for the purpose of bookkeeping, are they?

A. I could not say as to that, I have no means of knowing what the purpose was of consolidating these lines, it might have been done by purchase, or something of that kind.

Q. All the lines operated under the name of the Kansas & Colorado Pacific Railway Co., and the lines that you have just mentioned, are all owned and operated by the Missouri Pacific Railway Co. are they not?

A. Owned or operated, I should say, part of them are owned and part operated.

Q. Now what is the system of bookkeeping with reference to these various lines of road, are they segregated into groups?

A. They are separated by corporate properties.

Q. The Madison branch line from the Kansas line to Madison is a separate corporation?

A. Not as we understand it.

Q. Well, it is incorporated under the laws of the State of Kansas and constitutes a separate corporation, you don't mean to say that there is a separate account kept of that particular corporation?

A. Oh, no, I mean to say that there is not a separate account.

Q. Now in the sworn report to the Board of Railroad Commissioners it seems that the Central Branch, what is known as the Central Branch, is segregated from the rest of the railroads operated by the Missouri Pacific, and a special report is made as to it, why is that road segregated and not the other roads in the State of Kansas?

A. As I understand you it is a separate corporate property, it is not Missouri Pacific or Kansas and Colorado Pacific, but it is the Central Branch Railway.

86 Q. That line is owned by the Missouri Pacific?

A. I don't know as to that, I am not competent to say, I should say it is operated the same as the K. & C. B. and the other lines I mentioned.

Q. As I understand it this particular line, the Madison line, is not owned by the Missouri Pacific Company, is it?

A. No, not as I understand it, I don't understand it to be owned, I understand it to be operated or leased, or both.

Q. If it is simply what you would call in railroad parlance an operated line, how does it come that you do not segregate that business from the other lines?

A. From the Madison line?

Q. Yes?

A. I would answer that by asking this question, why don't we keep from here to Kansas City, which was at one time all there was

of the Missouri Pacific Railroad, why don't we keep that separate from the other parts of the Missouri Pacific Railway? As property is added to a corporate line we cover that in the one account, if that is of that corporate property.

Q. Isn't it a fact that you have one account for all the railroads owned and operated by the Missouri Pacific Co.?

A. One account covering the entire thing?

Q. Yes?

A. No sir, not that I know of, our books show the Missouri Pacific Railway, the Kansas & Colorado Pacific Railway, the Kanopolis & Kansas Central, the Kansas Southwestern Railway, the Rooks County Railroad, the Pacific Railway in Nebraska, the Central Branch Railway, the St. Louis, Iron Mountain and Southern Railway, and various other small lines down in Mississippi and Louisiana, and we have a ledger account as I understand, that is a separate account of each one of those because they are separate and distinct corporate properties; the Iron Mountain is separate from the Missouri Pacific in accounting matters, so is the K. & C. P. and other little
87 lines, the Central branch is entirely separate, and considered separately in accounting matters.

Q. So that the account of the Kansas & Colorado Pacific Railway Co. embraces twelve lines?

A. There was at one time eleven other lines.

Q. But those twelve lines constituting that corporation are treated as one railroad line?

A. So far as the earnings go, but let me explain that even the same corporate line has been divided up into what we call accounting divisions, and this particular Madison line was an accounting division by itself.

Q. That is at one time it was?

A. At one time it was, covering this twenty-two months, and prior to that, the month that was done was April, 1900, our operating officers wanted to divide the territory up into accounting divisions, and the Madison line, it so happened, was set aside as one accounting division, Division 18.

Q. When was that?

A. In April, 1900, and it was discontinued as a separate accounting division in June, 1905, and all that time our expenses were reported and charged against that accounting division just as though it had been a separate corporate property.

Q. How were the earnings accounted for that separate property?

A. They were not so divided.

Q. Why not?

A. Our operating officers were not so much interested in what a line earned as what it hauled over a line, and what it cost to haul it, it showed freight and passenger statistics and the cost, the expense.

Q. In your judgment as an accountant would not an account kept in that manner be considered as imperfect if it did not show accurately the earnings as well as the operating expenses?

88 A. No, that was a matter altogether with the operating officer for whom the statement was made, if he did not want

the earnings—it would cost something to add all these things on, and it cost quite considerable to separate these into accounting divisions.

Q. But in order to determine whether the Madison line had been operated at a loss it is necessary for you to know what the earnings had been, isn't it?

A. Not absolutely necessary because a special statement can be made up covering a thing of that kind, but not going through the records.

Q. But the best statement that you can make is only an approximate statement, it is not an accurate statement?

A. No, I don't say that as to the earnings, I stand by this statement right here, it is as near correct, as far as I know, as if we had kept that division of expense statistics and earnings strictly for all time, and with that correction in passenger earnings I will say the same of that, it is going back over the same data that would have had to be handled if the earnings had been apportioned and set aside for that line in the regular way currently.

Q. But in determining what the earnings were for the Madison line you first found what the earnings were for all of the twelve lines, didn't you?

A. That is only my first statement, I correct that by taking the train earnings from the passenger department, the passenger train earnings between Butler and Madison, the freight is taken independent of other lines, it is taken from the stations between which it moves.

Q. You will say you will correct that first statement, and in correcting that don't you use statistics with reference to the passenger earnings from mixed trains?

89 A. No sir, the statement that I propose to correct is the 22 months which is strictly passenger service.

Q. You state about the 22 months, from what time does it run to what time?

A. The first statement referred to from the 1st of July, 1903, to April 30th, 1905, when we had a strictly passenger train service there.

Q. How did you get the information with reference to the passengers that you hauled over the Madison line during that time?

A. This passenger one mile you refer to, or the earnings?

Q. Yes, the first?

A. As I said before, by applying the Kansas & Colorado Pacific earnings per passenger per mile to the passengers' one mile of the Madison line, that is what I propose to correct now and get in a different way and add $7,000.

Q. Now doesn't that make it an approximate statement?

A. Without correcting it would be approximate.

Q. When corrected, why wouldn't it?

A. If it was not for the express statement it would be as near actual as we could furnish it.

Q. If you base it on the passenger earnings for those entire twelve roads——

A. I won't in my correction.

Q. You will not?

A. No sir, I will go to our passenger accounting department, they have already furnished us the figures.

Q. For the one mile?

A. Yes sir, between Butler and Madison.

Q. You did not consider the other 11 roads at all?

A. No sir, not at all in my corrected statement, that is where I say possibly the first statement is not as good as it should be, it being the first I was called on to make I was not aware that the passenger train earnings statistics were furnished by our department that handled the reports right from the conductors, if anything can be said to be actual that is actual, they will get me those figures, that is
90 what I intended to incorporate in a corrected statement.

Q. I don't believe that you analyzed what the conductor's report would mean, if a ticket were sold from St. Louis to Madison Kansas would that conductor's report show a return of that ticket?

A. Yes sir, show the points between which the passenger travelled with that ticket.

Q. Does the conductor's report give, in your judgment, an accurate statement of the passenger traffic on this train?

A. We consider it does, I have never heard it attacked in any way or questioned.

Q. In railway bookkeeping how do they get at the earnings, the passenger earnings, over a particular line?

A. Usually, I believe, from the ticket sales.

Q. They don't get at it, then, from the conductor's report?

A. Not as I understand it, some lines might when those ticket sales are subject to refunds, there are refunds on them, that is usually in excess of correct figures, because if the passenger loses his ticket it is not travelled on, or if he concludes not to make the trip it is refunded so that there would be an excess of the correct amount, but the conductors' reports represent what is actually travelled, if it is a local rate they apply three cents, if an excursion ticket, they know what the rate is, and the passenger department determines the earnings based on that report; in case of cash fare the cash goes to the local treasurer, and the report covering the transaction, the movement of the passenger.

Q. Now, I will ask you, Mr. Nugent, if you know what the gross income is for the Missouri Pacific System for the State of Kansas?

A. I do not.

91 Q. Can you ascertain what the gross income is?

A. For any one state?

Q. I mean for the State of Kansas?

A. I don't think that can be given.

Q. For what lines can that be given?

A. I don't think we have any such data.

Q. Of course you could give us such data?

A. Well, if that could be given at all I should say it would have to be estimated, pro-rated on some basis or another.

Q. It would have to be estimated?

A. So far as I know, the actual division of earnings so far as I know I don't believe they keep it by states.

Q. Who prepares the sworn report which the company files with the Interstate Commerce Commission?

A. I suppose that is prepared by the various departments of the railroad.

Q. That is not one of your duties as statistician of the road?

A. I have nothing to do with the division of earnings even between corporate properties or states. I simply compile it after it is divided by other departments.

Q. I notice in your sworn report to the Board of Railroad Commissioners of the State of Kansas on page 61 that you give a table that shows the passenger traffic, the freight traffic, the total traffic, the car mileage and train mileage for the State of Kansas, that table is entitled, "Traffic and mileage statistics, State of Kansas;" did you compile that table?

A. I don't think I did.

Q. Look at that page and see if you can tell what employé of the road did compile it?

A. There is nothing here to show who compiled it that I can see, nothing to indicate to me who compiled it, there are nothing
92 but figures here, and I don't recognize the figures; I don't prepare that report.

Q. Have you ever been called upon to make an estimate of the passenger earnings for all the lines operated by the Missouri Pacific Railway Co. in the State of Kansas?

A. No, not that I remember.

Q. Have you ever been called upon to prepare a statement showing the earnings from freight traffic over all the lines of the Missouri Pacific Railway Co. in Kansas?

A. Not that I remember of except perhaps these figures that we compile by accounting divisions would give the information, of the various accounting divisions.

Q. But you don't know who prepared these reports for our railroad commission?

A. Those statistics, no, unless it would be said that I prepare them from statements furnished to the statistical department by the accounting divisions, corporate properties and the like of that.

Q. Now this report or table on page 61 of the sworn report of the Missouri Pacific Railway company shows the total passenger earnings for all your railroad properties in the State of Kansas; it shows also the passenger earnings per mile of road, and the passenger earnings per train mile, and in another place in this table it shows the gross earnings from operation to be $10,256,568.70; it shows that the gross earnings from operation per mile of road, in the State of Kansas, of course, to be $5,152.97; now it shows the gross operating expenses per mile of road is $1,017.32; it shows that the income from operation per mile of road, that means net income of course, is $1135.65; those are all the roads operated by the Missouri Pacific Railway in the State of Kansas; now you are not prepared, of course,

to say that these figures set forth in this statement on page 61 of this sworn report are not correct?

93 A. No sir. I am not prepared to say anything about that because I don't prepare the statement.

The REFEREE: For what year is that report?

Mr. TAYLOR: That is for the year ending June 30th, 1904, that was two years ago.

Q. Now, on page 134 of the 18th report of the Board of Railroad Commissioners of Kansas, there is a table setting forth the gross expenses resulting from operation in the state of Kansas of all the railroads operated in the State of Kansas, and this table shows for the Missouri Pacific System in Kansas that the per cent. of the operating expenses to earnings is .78, leaving an income above the gross operating expenses of 22%; you cannot say that that is incorrect, can you?

A. I wouldn't say that it is either correct or incorrect.

Q. Now, there must be some one around your office here who is familiar with the preparation of these reports, can you tell us who he is?

A. I think the general auditor can point him out, they are not prepared by me, and that is all I can say; as to who prepared those, actually prepared those statements, I should think he would have to get a lot of figures from various people, for which he could not vouch.

Q. He ought to be familiar with all the business?

A. He ought to be familiar enough to know where to get certain statistics, or data, and get them together.

Q. Now, in preparing that table, to go back to that table that you have made up of the passenger earnings for the 22 months, you say that you had to dig that out by investigating the conductors' reports?

A. Our passenger accounting department which receives those reports regularly, and daily, and from them prepares a statement in a regular way.

94 Q. In that department do they abstract those reports, I mean do they carry them over to some journal showing each month's receipts?

A. No, I don't think it enters into a journal, I don't know what form of paper is used, but it must be done in a systematic way because it is a regular part of their work.

Q. Those totals were handed to you?

A. Yes sir.

Q. You didn't examine the reports individually yourself?

A. Oh, no, I didn't handle them, I could not have.

Q. You don't know what kind of book is kept of the reports of conductors?

A. They have an impression copy of them, after making them up they turned to their impression copy and gave me these figures. It is necessary for them to compile these figures in order to advise the general manager, I think. They call it estimated, the train

figures are estimated because they are subject to correction, for instance, a ticket might go over to the next month.

Q. You don't have any idea what kind of book they keep of the conductors' reports, do you?

A. No sir, I do not.

Q. You don't know whether they keep an account for each conductor, do you?

A. I don't know that, either, but these earnings that they furnish me is what they furnish in their regular reports to the general manager of train earnings.

Q. And they merely report to you—the figures which they gave you were compiled from conductors' reports turned into the general office here during that 22 months?

A. They were compiled sometime before this, not for this specific purpose, they simply referred to the record in getting them, they were compiled long before they ever dreamed of this suit, compiled in the regular way, they simply turned to their impression copies, and gave me the figures on that.

95 Q. But you don't know who made up the copy?

A. No sir, not the particular man, but the head of the accounting department supervised it.

Q. Who is the head of that department?

A. Mr. McIntyre, the auditor of passenger receipts.

Q. Is he the man that furnished you the figures?

A. The chief clerk actually gave me the figures, I believe.

Q. And his chief clerk is the man probably who dug out this information?

A. His force, he supervised it just like my force got this out, it takes quite a number of men to get these out. He turned to his impression copy, I said that I had made up a list of the Madison line before I knew they had regular train earning reports, and I said, "I wish to get these figures in case I should be called on," and he went to one of his sub-chiefs and got his impression copy, and called off the different amounts to me, and these various amounts make up this $31,000 which I speak of, which I will incorporate in the correct statement.

Q. Those men are here in the building?

A. Yes sir, I think so, supposed to be, no doubt the chief clerk is right now on the ninth floor, he probably could open that impression book and show you the identical figures; you see I added one per cent. to cover the excess baggage, that is estimated, he told me it was always considered that one per cent. was ample to cover the excess baggage.

96 F. P. JOHNSON, sworn on behalf of defendant, testifies as follows:

Direct Examination by Mr. DOSTER:

Q. State your name, residence and occupation?

A. F. P. Johnson, 2857 South Jefferson Avenue, St. Louis, Mo., I am in charge of the accounting division department of the General Auditor's office.

Q. Being in charge of the accounting division in the General Auditor's office, what are your duties?

A. We are compiling statistics that show the expenses and the amount of business done on the various branch lines of the Missouri Pacific System, these branch lines being called accounting divisions, for the purpose of determining the performance of each superintendent, and the cost of carrying both freight and passengers on his line as compared with other divisions of the system and with other roads, the comparing of operating stations.

Q. How long have you been in that office?

A. About three years in charge of it; I have been in the office ever since the office itself has been in existence.

Q. How long has that been?

A. Since April, 1900.

Q. You are, of course, familiar with the accounts of expenses incurred in the operation of the various accounting divisions of the Missouri Pacific system during the time that you have mentioned, are you?

A. Yes sir.

Q. Are you in charge of the accounting work so far as revenue earned is concerned, or only so far as expenditures incurred are concerned?

A. Only so far as expenses are concerned, of course earnings do not enter into our operating statements at all, we have nothing to do with them.

Q. Beginning with July 1st, 1903, and from thence on for any period of time, was the line known as the Madison branch a separate accounting division?

A. It was up to the 30th of June, 1905.

97 Q. What do you mean by a separate accounting division?

A. Well, we have three separate divisions of the Missouri Pacific system; the first division, the general division as it appears on the books of the Company, is the corporate lines of the Missouri Pacific as separate from the K. & C. P. Railway, the Iron Mountain and Central Branch, they are separate properties, we call them separate properties or corporate lines, I believe they are operated under separate charters, I believe that is the idea; the charter of the Missouri Pacific has nothing to do with the charter of the Iron Mountain, that is my understanding of it, in addition to these properties we have operating divisions, that is certain parts of the system under the jurisdiction and control of the various superintendents for instance, one superintendent will have jurisdiction of the St. Louis terminals, another superintendent will have jurisdiction from Kirkwood, Missouri, to Rock Creek Junction and the intermediate branches; prior to the 1st of July, 1905, these operating divisions were again subdivided into accounting districts to enable to determine the expense of small pieces of track.

Q. And you say during the time mentioned the line known as the Madison branch was, for accounting purposes, a separate division?

A. Yes sir.

Q. Did you ever compile or supervise the compilation of a table of expenses of the Madison Branch line, and, if so, covering what period of time?

A. Well, our regular records, our office records and our monthly statement to the general manager and to all superintendents and to our president as well, will show a statement of the expenses of the Madison line. Some two months ago we compiled a particular statement on that line for the benefit of Mr. Nugent, who was
98 securing this information that is presented here, or the statement of expenses in his statement is the statement that was compiled in my department.

Q. I wish you would turn to that file in front of you there, turn to the tables marked Exhibits A and B, and select for us the table of expenses which you compiled, or the compilation which you supervised, have you it?

A. I have here a copy of it.

Q. Do you know whether those tables, Exhibits A and B correctly show the expenses incurred in the operation of the passenger service of the Madison branch during the period mentioned?

A. Those figures represent the passenger expenses just as accurately as it could be compiled.

Q. Separated from expense of freight operation?

A. Yes sir.

Q. In separating passenger expense from freight expense what basis or method was used?

A. Perhaps I had better take that up under the general head of expenses, the fifth general division, and I could explain better. For the purpose of compiling a report of operating expenses that was divided into five general classes, maintenance of way and structures, maintenance of equipment, conducting transportation, contingencies and general expenses. Now, under maintenance of way and structures any expense for repairing or maintaining a passenger building would be charged to passenger expense, any expense for maintaining freight structures would be charged to freight, and all other expenses under maintenance of way of a common nature, that is, both freight and passenger, would be divided on a train mileage basis. Now, the same division will apply to maintenance of equipment. Our passenger equipment repairs are charged to passenger account, but any common expense that could not be divided, that is, could not
99 be charged to either freight or passenger, would be divided on a train mileage basis. Conducting transportation accounts here consist of station expense, train expense and locomotive expense, and they divide themselves, they are either freight or passenger. Contingencies are miscellaneous expenses necessary in soliciting business or operating trains, such as loss and damage of freight, injuries to persons, they are either freight expense or passenger expense. Our general expenses consist of salary and expenses of the general officers of the road, and are necessarily common expenses divided on a train mileage basis. Now, under conducting transportation we have a certain amount of expense for joint passenger and freight stations, they are small stations where we have one man who acts as freight

and passenger agent and everything else, possibly just one man employed at that station. In cases of that kind we divide the expenses one-fourth passenger and three-fourths freight. That same rule will apply to the division of mixed train expenses. I believe that covers all general divisions between freight and passengers.

Q. Now, there are some expenses that are common to both freight and passenger service that are divided on a train mileage basis. Now, what do you mean by a train mileage basis?

A. Well, we take the passenger train mileage and the freight train mileage over each division and make per cents, take the percentage that the passenger proportion of the total mileage bears to the total.

Q. Then there are some expenses that are common to both freight and passenger service, one-fourth of which is charged to passenger service and the remaining three-fourths to freight service; why is that division into fourths made?

100 A. That has been a basis used in this road and all other roads for seventeen years to my knowledge, and I don't know how much longer, and my impression is that it is based on the relative amount of business that each class performed by mixed train and at these joint stations.

Q. And is that regarded as a proper division of expenses between the two departments of service for the purpose of charging each with the expenses proper to be borne by it?

A. I believe that is the idea, it is adopted by all roads that I have any knowledge of, called for by some of our state railroad commissions.

Q. Do you know whether the Interstate Commerce Commission has a rule of that kind?

A. The Interstate Commerce Commission makes no call for division of expenses between freight and passengers, but our state boards do ask that we divide mixed trains in that proportion.

By the REFEREE:

Q. In speaking of train mileage does the number of cars attached to the train cut any figure?

A. It does not.

By Mr. DOSTER:

Q. Do I understand you to say that the tables before you, Exhibits A and B, correctly show according to the basis of apportionment that you have stated, the expenses properly chargeable to the passenger service on the Madison Branch during the 22 months period mentioned?

A. They do, yes sir.

Q. And do you say that the bases of apportionment from which these calculations of expense are made are the bases employed by the Missouri Pacific Co. and all other railroad companies of which you have knowledge?

A. Yes sir.

101 Q. You have before you two other tables, Exhibits E and F, they purport to show in connection with the passenger

revenues the passenger expenses on the Madison Branch during the 11 months period, did you compile or supervise the compilation of those tables of passenger expenses?

A. Yes sir.

Q. During the period shown by those two tables as I understand, a mixed train service was employed on the Madison Branch, and there is a separation in the table of passenger expenses from freight expenses. State the method or basis on which that division of the two classes of expenditures was made?

A. During the period for which this statement of 11 months covers the expenses were compiled as they were during the former period, that is strictly passenger expense, if there should be such, would be charged to passenger accounts, but in the case where it was a mixed train service we would divide the train expense as we divide those joint station expenses, one-fourth to three-fourths, maintenance of way expense and common accounts would still be divided on a train mileage basis, but of course being a mixed train service the division would be one-fourth and three-fourths.

Q. Is that as accurate a way of apportioning the expenses between the two departments of service as can be employed?

A. I believe it is.

Q. Do you know whether that is the basis of division of expenses between the two departments of service that is and has been employed on the Missouri Pacific system?

A. Yes sir.

Q. Do you know whether it is the basis of division employed on other railway lines?

A. It is the generally accepted basis of all railroads in compiling their operating statements.

102 Q. Well, is that basis arbitrary entirely or is there a reason for it, and if so, what is the reason for that division?

A. Well, the only reason that I can give is that the expense will depend upon the total mileage made by all classes of trains, now then, the division should be the proportion of the mileage of each and the extra weight of a freight train due to the number of cars it carries is offset by the speed of the passenger train, and the extra car necessary in moving that passenger train. I know of no other reason but there may be dozens. Of course the formula or basis is the basis approved by the operating departments, not by the accounting departments, and it is the result of their experience and observation. Of course they are just as careful and just as anxious to get the fair division of operating expenses as any, because on the operating expenses depends the position of the superintendent. It is an actual recapitulation of the amount expended by him for the volume of business that is reported for his division.

Q. You have before you a table of freight earnings and freight expenses in detailed form, and also recapitulated. It is marked Exhibit G. Did you compile or supervise the compilation of that table so far as it relates to expenses of freight operation?

A. That is a statement for eleven months?

Q. Yes?

A. Yes sir, it is a statement of freight earnings and freight expenses for the 11 months ending March 31st, 1906, in typewritten form.

Q. Is that statement accurate according to the basis of apportionment or calculation employed?

A. By the freight and passenger?

Q. Yes?

A. Yes sir, it is accurate for this reason, that when the divisions are made they must balance, and an error of anywhere from one cent up would be detected.

103 Q. Are they accurate according to the basis of apportionment?

A. Yes sir.

Q. Now, in the compilation of that statement what basis or method was employed?

A. Well, from the period from May, 1905, to June, 30, 1905, two months of the 11 months, the same basis was used as was used in the previous statement covering the period of 22 months. Commencing July, 1905, we abolished our accounting districts or separate operating districts, the 1st of July, 1905, and from then on compiled the expenses by operating districts, and the expense we report for the Madison line states track mileage proportion of the total expense of the operating division of which it is a part.

Q. Assuming the correctness of the statements of passenger earnings as made in those tables, the first ones examined by you, by Mr. Nugent, are you able to say whether the Madison branch line has been, during the period covered by the tables, paying the expenses of its operation or suffering annual deficits?

Mr. TAYLOR: I object to the question as calling for a conclusion and not the best evidence, that the books and records show for themselves.

The REFEREE: I think it is a mere conclusion, but he can answer, though.

The WITNESS: From the earnings and expenses as reported here I should say it was not a paying road. There was a heavy deficit each month.

By Mr. DOSTER:

Q. What do you say as to freight earnings and freight expenses?

A. I have not seen the freight earnings statement. Approximately the same deficits would appear there.

104 Q. I observe that in the tables Exhibits A and B there are five general items of expense noted on the tables for the eleven months period, and on Exhibits E and F there are but four; are two of the items shown in the twenty-two months' table, Exhibits A and B combined into one in the other two tables, Exhibits E and F?

A. They are.

Q. What two are combined?

A. Conducting transportation and contingencies have been combined in conducting transportation, and there never was but one

general account, but for convenience and for better information prior to July 1st we had divided certain items under conducting transportation between conducting transportation and contingencies for ready reference, but the Interstate Commerce Commission simply provides for four general headings.

Q. Are those the four that are noted in the two tables last mentioned Exhibits E and F?

A. Yes sir.

Cross-examination by Mr. TAYLOR:

Q. Have you ever been over this line of road?

A. Over this particular line?

Q. Yes?

A. No sir.

Q. Do you know who the superintendent is of the division of which this line is a part?

A. At the present time?

Q. Yes?

A. George H. Stapp.

Q. Was Mr. Walsh the superintendent?

A. J. W. Walsh was for just a short time.

Q. How many lines of railroad constitute that division under Mr. Stapp?

A. There are four small divisions, or rather four divisions, and some five or six spurs, ten or fifteen miles long, but they are all part of the Missouri Pacific Railroad.

Q. Is there a main line or a portion of the main line of
105 the Missouri Pacific in that division?

A. Not what we call the main line. Our main line is from St. Louis to Pueblo and St. Louis to Omaha.

Q. And none of that main line is in Mr. Stapp's division?

A. No sir.

Q. His division is constituted entirely of branch lines?

A. Yes sir.

Q. And where do those branch lines connect with the main line?

A. At Pleasant Hill.

Q. The traffic then that is gathered up on these different branch lines *and* conveyed to the main line at Pleasant Hill?

A. Yes sir.

Q. All that traffic comes from Kansas?

A. Anything that comes from Kansas over his division.

Q. That is what I mean, over his division. Now, in your department how did you keep the expenses, the operating expenses of that division?

A. That is of this operating division, during the eleven months or the twenty-two months.

Q. I will say during the 22 months?

A. During the 22 months we would charge out the expenses from the pay-rolls, from the vouchers, directly to that branch from Monteith Junction to Madison, which was a separate accounting division at that time.

Q. Did you keep a separate account for each one of the other branches constituting that division?

A. Yes sir—not for each one but for—well, we had four separate divisions, four separate accounting districts.

—. In that one division?

A. In that man's territory, in that division.

Q. I wish you would state those divisions so we can have them in the record?

A. Terminal points or names?

106 Q. The names and terminal points?

A. Our first division was the Joplin division; its territory was from Pleasant Hill to Joplin.

Q. Do you know the mileage?

A. It is there (referring to a pamphlet), I can look at it, I cannot give it to you from memory.

Q. Go ahead?

A. Included in that Joplin division are some three or four small districts, six or eight miles long, in and around the city of Joplin, I cannot call them off. The next division was the Madison division from Monteith Junction to Madison. Our third division was the Pittsburgh division, running from Nevada to Linden. It was the old Nevada and Linden road. The fourth division was the Chetopa division from Chetopa to Coffeyville.

Q. Now, can you estimate about what proportion of the mileage of that whole division the Madison Branch is a part?

A. Well, I should say twenty-five per cent., between twenty-two and twenty-five per cent.

Q. Now is it not a fact that you keep your books so as to show the operating expenses for each division in order to determine what the superintendent of each division is doing by way of economical management, &c.?

A. You say that division, you mean these operating divisions or operating districts during that period?

Q. I mean operating districts. Mr. Stapp, as I understand, has all the lines you mention under him?

A. He did at that time, and we kept each account separate.

Q. You had an account for that whole division, which was under Mr. Stapp which showed whether or not he was managing that division in an economical manner?

A. Yes sir.

Q. Now, will you explain the purpose of segregating the Madison Branch from the rest of that division during that 22 months?

A. The only reason that I can see now—of course this was done under the instructions of our general manager—the only

107 reason for doing that was to enable him and his general offices to determine the cost on different parts of the system.

Q. You mean of the system or his division?

A. Of all divisions, not only the Joplin, but all other operating divisions. At one time we had 62 of those accounting districts, every superintendent's territory was subdivided into a number of accounting districts.

Q. At that same time?

A. Yes sir.

Q. Did you make an attempt to ascertain the cost of operation of each one of the branch lines during that time, during that 22 months?

A. Well, I will not say on each one of the branch lines, but on most of them.

Q. Was that the object of your department?

A. That was the object of it.

Q. That was your instruction?

A. Yes sir.

Q. Now, in order to do that it was necessary for you to keep an account of every expense there?

A. Yes sir.

Q. And the expense of the operation of the Madison Branch was divided according to your Exhibit B into five sub-divisions?

A. Five general divisions.

Q. Maintenance of way and structures?

A. Yes sir.

Q. Now, how did you arrive at that total expense which is stated in this table for maintenance of way and structures?

A. Every pay-roll that was audited by the company covering charges of employés, and every voucher covering any expense that might have occurred passed through our office, and from the nature of the expense we determined what it was for, and where it was incurred and charged it up accordingly.

Q. Do you mean to say you kept a separate account of the cost of keeping up that line from the state line of Kansas to Madison Kansas or from Monteith Junction to Madison Kansas?

108 A. From Monteith to Madison, Kansas, or the Madison line.

Q. What do you include in maintenance of way and structures?

A. All repairs of roadway, all steel rail and cross tie expense, all station buildings and grounds, all wharves, docks and landings, should there be any, there are not on this line, that is for river roads, that constitutes the principal item of maintenance of way, bridges and culverts.

Q. You also include what you call betterments in railroad parlance?

A. No, betterments on the road, improvements on the road, are not charged in expenses.

Q. Not charged in maintenance of way and structures?

A. No sir.

Q. Some roads do charge it there?

A. I do not believe they do it of late.

Q. Do not do it now in this office?

A. No sir. Improvements in a road are not part of its operating expenses. The taxes of a railroad are not part of its legitimate operating expenses.

Q. I presume that the salary or wages of section hands go into that account?

A. In performing regular repair work.

Q. Do the salaries of agents go into that account?

A. No sir.

Q. They go into another account?

A. Yes sir.

Q. Now, do you know how this amount of $49,966.01 was arrived at in this Exhibit B, that being the amount stated there for maintenance of way and structures? Was that the amount that was actually expended upon that road from Monteith Junction to Madison Kansas?

A. In maintenance of way and structures?

Q. Or did you arrive at it in a proportional way?

A. No, only in case of a superintendent's salary. A certain proportion of his salary is chargeable to maintenance of way and the balance of it to conducting transportation.

Q. What portion to maintenance of way?

A. Half. His entire salary, of course, should be charged
109 to his entire division and it is apportioned out among the different districts on the basis of the number of track miles in each district, both his salary and that of his office force. His office force is charged to the entire division as well as his own expense, but with that exception the maintenance of way as a local expense can be charged to the division benefitted.

Q. So far as his salary and his office force is concerned the charge in this maintenance of way and structures account is proportional?

A. So far as his salary is concerned.

Q. According to the track mileage of that portion of the line in his district?

A. Yes sir.

Q. Well, now, is it not a fact that this amount named here of $49,966.01 was arrived at in the same way, was not there a certain amount expended for maintenance of way and equipment on the lines in Mr. Stapp's division, and was that not apportioned according to the track mileage to the various branches, and to the Madison line?

A. That $49,000 that you speak of is that there as the maintenance of way expense?

Q. I so understood it, if I am mistaken correct me?

A. That is maintenance of way and structures.

Q. I did not mean to say equipment, I should have said structures?

A. The maintenance of equipment expense is not a proratable charge.

Q. I speak of maintenance of way and structures. Can you answer from your own knowledge as to whether that amount was found by ascertaining the portion which should have been charged to the Madison line?

A. It was the actual charge, the actual expenses incurred on the Madison line with the exception of the superintendent's expense and his office force which is a proratable charge. There is no
110 other way of looking at it. All other expense is an actual expense incurred on the Madison line.

. If several carloads of ties were put on the Madison line it was charged up to the division under Mr. Stapp, but was charged ne Madison line?

. It was charged to the Madison line, which is part of Mr. p's territory, or was then.

. If steel rails went to the Joplin Division, or the Joplin part is division they were charged up to that part of it?

. Yes sir.

. And you maintained that system of bookkeeping during that nonths?

. Yes sir.

. Now, let us pass to the next item here, maintenance of equip-t. Under this analysis you have charged to maintenance of pment $4,378.02; now, how did you arrive at that charge?

. That consists principally of repairs to locomotives, freight and enger cars, work cars and superintendence of motive power de-ment, and miscellaneous shop supplies.

. Is it not a fact that that charge is necessarily proportional?

. Well, it would be under ordinary circumstances. Now, the expense is a charge to the division in which the shop is located. have no charge for the Madison division on that account, use you have very little repair work done on the Madison line. repairs of locomotives, passenger and freight, are charged to line which owns the road. If the equipment is owned by the souri Pacific, as in this case, the Missouri Pacific will stand all airs with the exception of such repairs as are caused by wreck or ough accident, and in the case of the K. & C. P. or the Madison they pay a rental for their equipment and that accounts for the maintenance of equipment being so small as compared with other accounts. The maintenance of equipment is ordinarily a large item of railroad expense.

Q. I would think that would be true on a long line of road?

A. The K. & C. P. and the Madison line own virtually no equip-nt of their own, neither cars nor locomotives.

Q. That is owned by the Missouri Pacific Railway proper?

A. That is owned by the Missouri Pacific Railway proper, and K. & C. P. at that time paid a rental just the same as if it rented from the Chicago & Alton or Union Pacific.

Q. Is that rental charge included in maintenance of equipment?

A. No, it is included in maintenance of transportation, the hiring equipment.

Q. What is included in maintenance of equipment?

A. Such damage as may be caused by accident or wreck, and their portion of any motive power supervision such as inspection.

Q. Could you imagine in 22 months that her proportion for that miles of line, the Madison Branch line, would be $4,378.02?

A. I could imagine such an expense as that in a period of three four months. Any bad accident on that line would cause her to nd several thousand dollars for repairs for which she would be ponsible.

Q. You do not know whether there was an accident on that line or not?

A. I cannot say.

Q. During the 22 months there were two trains operated on that line were there not?

A. I cannot say positively.

Q. Do you know whether there was a passenger train operated there or not?

A. During that 22 months my understanding is there was regular passenger service.

Q. And a regular freight service?

A. Yes sir.

112 Q. Do you know whether or not there was a passenger train and also a freight train one way each day?

A. No, I could not say positively.

Q. All you know is you believe that those figures are accurate, that the charge of $4,378.02 against the Madison Branch for maintenance of equipment you believe to be accurate?

A. I do.

Q. From the reports that were made to your office?

A. From the reports made to our office and the work done by our people.

Q. And you believe that is actually charged to that Madison line mileage because of the actual cost of maintenance of equipment for that part of the line?

A. Yes sir.

Q. Will you swear that that is not a proportional charge for Mr. Stapp's division?

A. No, I will not say that, because I say it includes a certain amount of inspection which must be prorated, but the principal part of maintenance of equipment is repairs to the equipment, and in the case of the Madison line it must be for wrecks because she owns no equipment to repair.

By the REFEREE:

Q. How do you divide the expense of repairing freight cars that are used one week on the Madison line and the next week used on some other line?

A. In the case of the Madison line she would not pay the expense for ordinary repairs, she pays the rental and the Missouri Pacific must maintain the equipment in good order. The Missouri Pacific is charged with repairs on the Madison line.

By Mr. TAYLOR:

Q. Let me see if I understand you, the item of maintenance of equipment is largely for the rental charge?

A. No.

Q. What do I understand you then?

A. The principal items of maintenance of equipment would be repairs of locomotives and freight and passenger cars, the

113 K. & C. P. not owning any equipment would only be charged with such repairs as were caused by damages or caused by

recks. In lieu of repairs she pays a rental, and this rental is charged
expense of conducting transportation, not to maintenance of
quipment, the $4900 covers the damage repairs and it also covers
e proportion of shop expense for the inspection of locomotives,
eight and passenger cars.

By the REFEREE:

Q. It does not cover ordinary repairs?
A. Ordinary repairs are not chargeable there at all.

By Mr. TAYLOR:

Q. Passing to the head of conducting transportation I see you
ave charged in Exhibit B to conducting transportation the sum
f $27,313.87, what items are charged under the head of conduct-
g transportation?
A. All yard expenses, such as switchmen and the switching of
rains, the switching of cars, all station expenses, wages, expenses of
gents and their office force, labor about those stations, all supplies
rnished to stations, all train expenses such as wages of train crews,
nd miscellaneous supplies necessary to operate a train, all engine
xpenses consisting of the wages of engineers and firemen and fuel
nd oil, miscellaneous supplies necessary to operate engines, that is
onducting transportation expense.
Q. Was that expense kept in a separate account for the Madison
ne during the 22 months?
A. Yes sir.
Q. So that there is nothing included in this charge except actual
xpenditures for conducting of transportation upon that line?
A. Yes sir.
Q. And you swear that that amount was not arrived at according
to the track mileage of the Madison line in that division?
14 A. Yes I can for everything under conducting transporta-
tion, there is nothing there prorated, everything is located.
Q. None of the expenses of the Joplin Division or any other
ivision in Mr. Stapp's division is included in this charge?
A. There is absolutely nothing that I can think of?
Q. You made the analysis yourself, did you?
A Not the actual work, it was done under my supervision, but I
now what goes into every account.
Q. You are now testifying of your own knowledge as to how the
ccounts were kept there of Mr. Stapp's division?
A. Yes sir, during that 22 months.
Q. You know it is not a pro rata charge based on the whole
ivision?
A. Yes sir.
Q. But that it is a segregated charge for the Madison branch?
A. Yes sir.
Q. You swear to that?
A. I swear to that.
Q. What do you mean by contingencies, I think you explained
what contingencies embraced, but I did not get it clearly fixed in
ny mind?

A. It consists of miscellaneous expenses necessary in the operation of a railroad, such as the salary and expenses of commercial agents, men who solicit freight and passenger business. It also consists of the hire of equipment, both engines, freight and passenger cars, where it is necessary to hire the equipment from a foreign line the rental charge is included under contingencies; it also covers the cost of personal injuries, damage to property, either in transit or along the right of way, what we call a casualty account; it includes the cost of rents of any station building we would have to rent along that particular road, those are the principal items, and there may be other small items that enter in there.

By Mr. DOSTER:

115 Q. Is insurance included?

A. Insurance is not charged to contingencies.

By Mr. TAYLOR:

Q. You have a charge for contingencies in Exhibit B of the sum of $15,945.28, are those figures from a separate account kept for the Madison line during that 22 months?

A. In the case of contingencies we get that for the Madison line in this way, casualties, loss and damage, or injury to the person are charged directly to the line on which the accident or damage occurs, that is strictly a local charge. In case of salaries, supplies, expenses, commercial agents, men soliciting business, that is a system charge, for instance he is located at St. Louis and he is doing business, he is soliciting for all the lines of the system, and his salary is apportioned out amongst the various lines.

Q. You do not know what part of the $15,945.28 is chargeable for that purpose, do you?

A. I could not say. In the case of rental of equipment the K. & C. P. Railway pays a certain fixed charge for the hire of cars and locomotives used by it belonging to other companies.

Q. How do you arrive at that?

A. That rental is apportioned amoung the different branches or different operating districts, and the Madison line gets its part based on the mileage charge of its line, as compared with the mileage of the K. & C. P., that is in the case of rental of equipment.

Q. If there is a train mileage of 100,000 miles——

A. No, car mileage.

Q. A car mileage of 100,000 miles and there was 1000 miles of the tract in that division, and 100 miles of that track was in the

116 Madison line it would pay 1 10 of it, would it?

A. No sir.

Q. I wish you would state it, give us an illustration?

A. In the case of the rental that the K. & C. P. might pay for passenger cars we can assume there was 100,000 passenger car miles on the K. & C. P. road during one month, out of that 100,000 passenger car miles 10,000 occurred on the Madison branch, and in that event she would pay one-tenth of the rental charge for the hire of passenger cars to the K. & C. P.

Q. Did you keep any book so as to show the mileage on the Kansas & Colorado Pacific during that 22 months?

A. Yes sir.

By the REFEREE:

Q. You mean the number of miles one car travels, taking all the cars together it would mean that one car travelled so many miles?

A. Yes sir. During that time all records on the Missouri Pacific Road with the exception of earnings were kept by operating districts. We are prepared to show the cost in operating a mile, per train mile, per car mile and ton mile. These are the units that are used in determining the efficiency of a superintendent and his division.

By Mr. TAYLOR:

Q. You have another item called general expenses, what does that include?

A. That includes the salary and expenses of our general officers, executive officers, such as president and vice president, general auditor, general manager and general attorney.

Q. Does that include all of the army of employees at head quarters here, too?

A. Well it does with the exception of two or three officers in the building that I can think of now. The maintenance of way department is chargeable directly——

Q. That must necessarily be apportioned according to mileage?

117 A. The way we arrive at that is to take our general expense, first we apportion it between the corporate lines, between the Missouri Pacific, the Iron Mountain, the Kansas & Colorado Pacific on the basis of the gross earnings of each line compared with the total, then after determining what the Kansas & Colorado Pacific's portion is in the gross earnings basis, we determine the Madison Line's proportion on the track mileage, the Kansas track mileage in proportion to the total Kansas & Colorado Pacific mileage. We have the gross earnings by the corporate lines and that is the best possible basis, the gross earnings of each road, but it is impossible for us to secure the gross earnings of each one of the branches of the Kansas & Colorado Pacific, we *are* take the next possible basis, which is its track mileage and the Madison line stands its proportion of the total Kansas & Colorado Pacific expense.

Q. You say it is impossible to ascertain the gross earnings for any one of the branch lines?

A. No, I didn't.

Q. I understood you to say that?

A. It is impossible under our old system of accounting to ascertain the gross earnings of all of the branch lines. We can, as we did in this case, get the gross earnings of the Madison Branch, but to compile it for each district would require an enormous force of men and it has never been asked for by our people. I do not know of one road that does that.

Q. It is impossible to tell just what the standing of the division is?

A. Unless you do as was done in this case, go to the abstract of way bills for any given period and figure it out to determine the division of that particular line.

At this point the further taking of testimony was adjourned to 8:30 a. m. July 19th, 1906.

118 Pursuant to adjournment as above stated on July 19th, 1906, the taking of testimony was resumed as follows:

Present: Carr W. Taylor, Esq., counsel for plaintiffs, and Frank Doster, Esq., counsel for defendant.

A. DE BERNARDI, sworn on behalf of defendant, testifies as follows:

Direct Examination by Mr. DOSTER:

Q. What is your name, place of residence and occupation?

A. A. De Bernardi, Coffeyville, Kansas, general superintendent of the central district of the Missouri Pacific Railway.

Q. How long have you been in the service of the Missouri Pacific Railway Co?

A. Approximately twenty-four years.

Q. How long have you been superintendent?

A. I was superintendent five years, I have been general superintendent -bout nine or ten months.

Q. Were you ever located in the performance of your work at Osawatomie?

A. Yes sir.

Q. How long?

A. Approximately five years.

Q. You are acquainted from a railroad man's view-point with the Missouri Pacific properties in Kansas, are you?

A. Yes sir.

Q. Are you acquainted with what is called the Madison Branch?

A. Yes sir.

Q. While you were superintendent was that branch in your jurisdiction?

A. No sir, the branch came in my jurisdiction first about 1899 when I was appointed train inspector, I left there about a year later, then it came in my jurisdiction again in October last year.

Q. You were at one time train inspector?

A. Yes sir.

Q. What are the duties of a train inspector?

A. Practically the same as train master, we had charge of
119 transportation in a certain district.

Q. How long were you train inspector over the Madison branch?

A. About six months.

Q. Is the Madison branch now within your jurisdiction?

A. Yes sir.

Q. That line runs from Butler, Missouri, or more accurately speaking from Monteith Junction, Missouri, to Madison, Kansas?

A. The line runs from Monteith Junction, a connection with what is known as the Joplin division, to Madison Kansas, the crews run between Butler and Madison.

Q. The line is operated between Butler and Madison?

A. Yes sir.

Q. What does the company have at Butler in the way of terminal yards?

A. We have a small terminal yard there, turn table, side tracks, cinder pit, maintain engineer, watchman, coach cleaners, such force as is necessary to take care of power and equipment at a terminal.

Q. What is the distance from Butler to Madison?

A. About 108 miles, I could not give you the exact distance.

Q. From your experience as a railroad man and from your knowledge of the Madison Branch line is it feasible or practicable to operate that branch otherwise than from Butler to Madison?

A. No sir.

Q. Why not?

A. The line was built, a connection with what is known as the Joplin Division, to Madison, it was started from that point in order to make connections reached through the rails of this Joplin Division and its connections for both freight and passengers, and to operate in any other way we would not reach those connections and consequently could not hope to get any business.

120 Q. Have you a judgment as to whether it is feasible or practicable to establish terminal facilities on the Kansas side of the Missouri line and operate the Madison branch for passenger purposes within the State of Kansas?

A. It is not feasible.

Q. Why not?

A. In the first place the line does not pay operating expenses as it is.

Mr. Taylor: I object to that as a statement of a conclusion.

The Referee: That is a conclusion, but he may answer the question.

The Witness: The line has never paid operating expenses to my knowledge, being operated in the best possible manner, that is with our connections and with the terminal facilities which we already established at Butler, and which we must maintain in order to care for freight business. It would require the establishing of similar facilities at the state line or doubling the force that is necessary to take care of the service now, and would make a further increase in operating expenses and I do not think it would serve anybody. The people in general want a connection with some important center or centers, for instance Kansas City, St. Louis or Joplin, and they can be only reached by our Madison line through Butler and Joplin and the eastern divisions.

By Mr. Doster:

Q. What is the distance from the Kansas Line to Butler?

A. About nineteen and a half miles.

Q. Therefore if a division terminus and terminal facilities were

established on the Kansas side of the line there would still be a shor division of twenty miles to operate between the line and Butler i order to get any place?

A. Yes sir, it would be necessary to operate two lines, and unde our schedules with our train men it would cost us exactl

121 double the present expense for operation. Our schedule pro vides that runs of less than 100 miles will be paid for as hundred miles so it would be necessary to double the operating ex pense from that point.

By the REFEREE:

Q. You mean the expense of the crew?

A. Of the train crews.

Mr. TAYLOR: We object to all this testimony as immaterial, hav ing nothing whatever to do with the case.

The Referee overrules the objection.

By Mr. DOSTER:

Q. What is the standard locomotive run, if I use a term that can be understood?

A. The average freight locomotive run is about 100 miles per day passenger 175 miles per day.

Q. Well I do not mean by the day, but I mean what is the usual division distance, the distance between points of changing loco motives?

A. The most desirable freight terminal is 100 miles, they average about that, some a little more, and a few less, 100 miles is the average division.

Q. What do you say is the distance from Butler to Madison?

A. 108 miles.

Q. What and how many, if any, intersecting competing lines are there with the Madison branch?

A. I think seven.

Q. Name them?

A. There are two lines of the M. K. & T., the Frisco two lines of the Santa Fe, two lines of the Missouri Pacific and the Kansas City Southern. I think those are all.

Q. That makes eight, does it not?

A. Eight, yes sir.

Q. Those competing intersecting roads converge where, go to where on the north?

A. Practically the same business centers that we reach, Kansas City, St. Louis, the large business centers.

Q. How do you reach Kansas City on the Madison Branch?

A. Only by connection at Butler with the Joplin Division, trains from that line run directly to Kansas City through Butler.

122 Q. Which is the shorter and more direct route into Kansas City, your line or the others mentioned?

A. I am sorry to say it is our competitors'.

Q. What is the character of the country, and the industries carried on in the country tributary to the Madison branch line?

A. A few small coal mines near the east end largely in Missouri, with some little agricultural country, but principally grazing or stock and hay.

Cross-examination by Mr. TAYLOR:

Q. You say that the Madison branch from Butler to Madison is 108 miles?

A. Yes sir.

Q. I notice the contract puts it a little above 109 miles to the Government?

A. Our time table shows 108 miles.

Q. That is near enough?

A. Approximately.

Q. The trains that run over the Madison branch are started from Butler, you say?

A. Yes sir.

Q. Does that train make a round trip in a day?

A. No, there are two crews, one starts from Butler and one from Madison each morning.

Q. You have two crews employed on that line of road?

A. Yes sir.

Q. And since separate passenger service was taken off some two years ago, you have only maintained one character of train on that line, is that not true?

A. What is termed a mixed train, mixed freight and passenger, yes sir.

Q. You then have had nothing but a mixed train service over that line of road since April 30th, 1905?

A. Since those trains were taken off, that was prior to my connection with the territory the last time, so I am not certain about the date.

Q. Now, how many miles of that line do you say are in Missouri?

A. There are approximately sixteen miles in Missouri to Monteith Junction and three and a half miles operated to Butler
123 making approximately nine-teen and a half miles operated in Missouri.

Q. Are you aware of the fact that that line of road from the Kansas State line to Madison is operated under a Kansas charter?

A. No, I do not have any dealings with charters.

Q. You do not have anything to do with that?

A. No sir.

Q. Do you know how many stations there are on that line in Kansas?

A. I can take our official list and tell you in a few moments.

Q. I wish you would tell us where agents are employed?

A. Fourteen agencies, including two men who are joint with other men of the Missouri Pacific.

Q. Do you know what the average salary is of those agents?

A. I should say about $65 or probably $70 including all their commissions.

Q. You do not have to pay commissions, do you?

A. Yes sir.

Q. Don't you pay them a stated salary?

A. No, we pay our agents a stated salary and a per cent. of their ticket sales, commissions on ticket sales and express matter.

Q. Is it not a fact that the average wage is right at $50 per month?

A. Our minimum salary for an agent and operator is $50 a month, but that does not include their ticket commissions and express commissions. I have not struck an average on those agencies and would not be sure it is absolutely correct, but I think it will average close to $65.00.

Q. Did you include any stations in Missouri?

A. No sir.

Q. Those fourteen stations are in Kansas?

A. Yes sir.

Q. Now you have been over that line a great many times?

A. Quite a number of times.

Q. And you say that you know the character of the country through which the line runs?

A. I am familiar with that as a railroad man is with his country. I would say yes, I am familiar with it.

124 Q. Are you familiar with the eastern half of Kansas?

A. Yes sir, the southeastern.

Q. Well, now this road runs east and west; what is the first line north of it running in the same parallel direction?

A. Well, I am not well enough acquainted with the railroad map to give you that information, but a number of lines cross and parallel us in a measure.

Q. Look at this map?

A. (Referring to map.) I would say from this map the Santa Fe.

Q. Is the first line north of it and about what distance?

A. That depends on what point. At Colony it crosses.

Q. That is a north and south line that crosses at that point. I want to know what is the nearest parallel line north. I believe you stated it was the Santa Fe, now, what is the distance to that line?

A. I am hardly familiar enough with these maps to give you the information. It would be about eighteen miles from the Madison at that point. There are quite a number of cross lines in there.

Q. What is the closest line on the south running parallel with this line?

A. You have the Santa Fe and some other road here and our own line. We seem to be the closest parallel line, ourselves.

Q. How far is your line away from the Madison line?

A. I judge twenty miles according to the map.

Q. The Santa Fe is considerably farther to the south?

A. Not much?

Q. About how much?

A. This country is so thoroughly cut up with roads that I do not see how you can determine which are parallel lines and which are not. They cross and parallel, a regular gridiron of railroads.

Q. It is more than twenty miles to the south, that Santa Fe line?

A. Probably is to the Santa Fe.

125 Q. Now, do you think that eight railroad lines running to Kansas City and to St. Louis through 100 miles of the eastern portion of Kansas is an excessive number of railroad lines for such a territory?

A. Judging from the earnings on our line I should say they were excessive.

Q. You know as a matter of fact that the tonnage carried on railroad lines in that section of Kansas is a very large tonnage, don't you?

A. Yes sir, the tonnage through that portion is large.

Q. And you recognize the fact as a railroad man that fine service brings a railroad business, do you not?

A. Not always. The fact that better service was furnished and did not pay would seem to be evidence——

Q. I am not asking you that, my dear sir. I am asking you if it is not a fact as a general rule that fine service or service equal to that given by other railroads, gives a line its proportion of the business of the territory?

A. That is true, but it is not always possible to give equal service. The difference in mileage to the objective points makes a vast difference in the service.

Q. All railroads have branch lines, don't they?

A. Nearly all.

Q. And in a competitive territory it is the rule to maintain those branch lines in such a manner as to secure a reasonable share of the business, isn't that a fact?

A. I will say from operating experience that it is the desire of all railroad men to operate a line or to furnish such service as will get the greatest amount of business for the reason that is our only means of securing revenue, but after an experience indicating that the business is not to be had it is not good railroad management to put on additional service at an additional loss.

126 Q. Is it not a fact that you never did have a service on this line of road that was anything like equal to the service maintained on other competing lines in that territory?

A. Yes sir, that is true because the line is too long, no matter what kind of service we put on there we could not compete with the Frisco or Santa Fe or Kansas City Southern for Kansas City.

Q. You say the line is too long, are you familiar with the Central Branch?

A. Of the Missouri Pacific?

Q. Yes.

A. Yes sir.

Q. That is three times as long as in this country?

A. And runs through four times better country.

Q. How do you know it?

A. Because I was division superintendent there for about two years.

Q. I will ask you if it is not a fact that there is practically as much stuff produced in one county through which the Madison line runs

as is produced in any county through which the Central Branch runs?

A. No, I would judge that Jewell county on the Central Branch produces more than all the counties on the Madison line.

Q. You have not a very high opinion of Linn County, Anderson County, Coffey County, and a portion of Green wood county?

A. Not the portion of them traversed by the Madison Branch.

Q. Well, you never have kept the service up on the Central Branch, have you?

A. We had double daily passenger service when I was there, and what is considered good freight service, and from important points on the Central Br*a*nch to Kansas City and Missouri River points we are just as short as any other line. We are in position there to compete by furnishing service with other lines, but not on the Madison Branch.

Q. You know your service has been inferior to any other
127 road in Kansas?

A. I do not.

Q. On all your branches?

A. No sir.

Q. Don't you know as superintendent that you have made no effort whatever to keep up your passenger service and make it profitable?

A. I would certainly not admit that and expect to hold my position.

Q. Of course I want you to make a truthful statement whether you hold your job or not?

A. Well, I am telling you the truth, I am still under oath.

Defendant's counsel objects to the character of examination as utterly immaterial, incompetent and inadmissible from every viewpoint.

The WITNESS: I might be able to make an explanation that would make that clear if it is permissible.

Q. Go ahead?

A. No roads can maintain their branch lines especially in an unproductive country, as heavy main lines must be maintained.

Q. I do not think so either, we agree on that proposition, but you can maintain a passenger train each way each day?

A. We could by drawing the revenue to pay for it from some other part of the line.

Q. You know from your experience as a railroad man that passenger service on a mixed train is more dangerous than passenger service on a passenger train?

A. That is correct.

Q. And you know as a matter of fact that the people are entitled to a better service that a mixed train passenger service, isn't that true?

A. No sir, people are entitled to such service as they pay for, such service in my judgment as the revenue will warrant.

Q. You cannot stimulate your passenger service on the
128 Madison line as long as you do not furnish the service which is a reasonably fair service as compared with the service put on by other lines.

A. We applied the stimulant for a certain period and it did not prove effective, did not produce results, did not bring in anything like the revenue that it was hoped it would.

Q. Now, let me ask you when you had a separate passenger train on the Madison Branch is it not a fact that you had your time schedule for that train so arranged that it made no direct connection with any line at its terminals, and made no connection with any roads crossing your line?

A. I could not answer excepting that the connections that it was intended to make were made, and the only ones that it could make, that was for Kansas City and St. Louis at Butler. You understand that unless all railroads united in making a time card we could not connect with the train service on each line which we crossed, we could not do it with our own lines. We have a great many lines now that in preparing our time card we have arbitrary connections to make at terminals, and try our best we cannot fit that. With cross lines we have also arbitrary connections to make and some times by slowing a train up on one side or the other when the connection is getting close it can be done, but it is not generally done. Branch lines, if you will allow me to explain further, are intended to connect at as many points as possible, but, for instance, on the Madison Branch proposition, Butler is where it must connect, that is where we get our through service, where we connect with that service, and that connection was made by the Madison branch.

Q. Made which way, for Kansas City?

A. Both ways.

Q. I will ask you if people coming back from Kansas City on the night train did not have to lay over at Butler three or four hours?

A. I think not.

129 Q. Well, you would not swear that they did not have to lay over there?

A. No, we make a great many time-tables, usually two or three a year, and, of course, without referring to the time-table in effect at that time I could not remember the exact connection, but there is a train due at Butler about five o'clock in the morning, about 5:30 say, that has run on that schedule for fifteen years, and my recollection is that the passenger service left Butler at seven o'clock.

Q. Left there at eight o'clock?

A. My recollection is seven, but I would not be sure.

Q. There was a wait at that end?

A. The reason for that no doubt was——

Q. I do not care for it?

A. You do not want the reason?

Q. I don't care for the reason. I want to know if you had passenger service that made direct connection for Kansas City or any other important point?

A. Opposite service, connected at Butler for Kansas City with what is now known as train, I think, 204.

Q. What do you mean by opposite service?

A. You were talking of the west bound train before, we are now talking of east bound.

Q. You say that made direct connection?

A. That is my recollection, it made close connection.

Q. Well, now, let me ask you this, from your experience as a railroad man, don't you know that unless a passenger can get back without a waste of time at connection points that he will not patronize your line of road even though the service is perfect one way?

A. I will answer that this way, as I started originally to explain why the train was started out of Butler at seven o'clock.

130 Q. I want you to answer point blank, not theoretically. As a matter of experience don't you know that it does affect your passenger service injuriously?

A. That is a question that could not be answered intelligently without an explanation with it to show why trains are scheduled at arbitrary times.

Q. I don't care about your showing that. Here is a fact, and I want you to answer the question. When that fact exists does it not affect the patronage of the line injuriously?

A. It affects the through passenger service, not the local.

Q. Between stations it would not affect the local?

A. A train leaving Butler, for instance, at five o'clock in the morning to do local work will not give you much business because it is too early. That is the reason connections are not made closer. The service was intended as nearly as possible to affect both the through and local business, and in the judgment of the officers the most suitable hour for both services was selected.

Q. Don't you know that where you give a passenger service one way each day that five or six o'clock in the morning is not too early to catch all the local business?

A. We have a great many complaints in my territory of trains scheduled to leave at five o'clock in the morning. We are now arranging to change our schedule more than 600 miles long for the reason that it passes two good towns in Kansas too early.

Q. That might have some effect where there is competition for the same territory, one train leaving later and one leaving earlier?

A. In this case it is not exactly true because the change is intended to take care of absolutely local business between Neodesha and Nowata, Indian Territory.

Q. You will admit that the service on the Madison line is inferior to the passenger service upon any other line in that section

131 of the country?

A. I am not familiar with the service of other lines except the Missouri Pacific. We have other lines in Kansas where the service is the same as on the Madison Branch.

Q. You know that all of those competing lines in there have better service than you have on this line, better passenger service?

A. I understand they have, although I could not say because I am not familiar with the lines.

Q. You know as a railroad man that that very fact will kill the business on your line?

A. I also know that we have better service on paying lines of ours in Kansas.

Q. That is not in this case?

A. These cross lines that you are asking me to admit have better service are main lines similar to our line between Coffeyville and Kansas City, where we have heavy service.

Q. I mean in order for you to increase your passenger business and get a fair share of it from that territory that you will have to give a fair passenger service to the people, and at the same time make such connections as will get people to the respective points of travel?

A. I know that we made an effort to furnish that service and it did not pay us, and I further think that the best evidence of that is that we do not furnish that service because that is the only way we have to make money there, by handling freight and passengers.

Q. You admit you never have had a passenger service equal to any other line in that country?

A. No, I have not.

Q. Will you swear it has ever been equal to the service of any other line?

A. I do not know about the service on other lines, but it is equal to the service to similar territories on our line.

Q. Will you swear that the connections you made with passenger trains that you have maintained in the past on that line were
132 such as to stimulate travel on your line?

A. I have sworn to every statement I have made here.

(Question read.)

A. In our best judgment it was the very best connection, everything considered, the best schedule, everything considered, that could be arranged for.

Q. But you do know as a railroad man that where there is a lay over or a wait at a connection point, it has a tendency to injure the passenger travel over that line?

A. Yes, I admit that, certainly, that the better connections you have the better through business you have. I thought we were talking of Kansas business. If we talk of Kansas business on this line, we do not need connections, there are none.

Q. Is it the policy of a railroad company not to make connections with any other line of road?

A. Not necessarily, it is their policy to make their own connections, and in large centers for instance in Kansas City, to catch all connections out of there.

Q. The Frisco runs north to Kansas City crossing your line at Pleasanton, and at that point, it is about five or six miles distant from the Kansas State line, do you know whether there ever was any attempt made to arrange a passenger schedule which would connect with north or south bound trains there?

A. I do not suppose there was.

Q. If a schedule was arranged with regard to the time trains are run over the Frisco on the north, would not that have tendency to stimulate local travel in Kansas?

A. I don't think it would increase the travel and certainly when we handled the business at Kansas City instead of Pleasanton it was not remunerative; it would not be, for at Pleasanton we could get twenty or thirty cents fare instead of the fare to Kansas City.

133 Q. Mound City is six miles approximately west of Pleasanton and it is the county seat of Linn County and has quite a large population, don't you know that a large portion of that population in order to get to Kansas City and some other points in Kansas goes to Pleasanton for the purpose of taking a train on the Frisco line?

A. No, I don't know what the people do there. I presume they would because the Frisco is shorter to Kansas City, if they were going there, than we are. I have no doubt if they wanted to go to Kansas City they would go there regardless of what service we had.

Q. You lose the local traffic from quite a large city between those stations?

A. We had it once and could not afford to keep it.

Q. You do not know whether you had it on a schedule which would give people a chance to get off at Pleasanton and catch some other train, do you?

A. No, but we had as good a schedule as could be prepared. It was prepared by men experienced in that kind of matters, and was as good a schedule as we could prepare now.

Q. Let me ask you this question, if a service equal to that upon other lines, both freight and passenger, was installed upon the Madison line would not your share of the business or the business that your road is doing be very greatly increased by that fact?

A. If it were possible to establish the same service they have no doubt it would increase the business, but considering the physical conditions, the length of our road, and the length of our competitor's, it would be physically impossible to furnish the same service. The other roads have trains scheduled as fast as they run in the west and some of them are nearly as short again as our line, so it

134 would be necessary for us to run our trains at practically double the speed of our competitors, which is not practicable, is not safe, and no sane man would undertake it.

Q. There is no east and west passenger train in that part of Kansas within twenty miles of this line on the north, and more than twenty miles on the south?

A. The travel is not east and west excepting locally at stations on that line, and they now avail themselves of the mixed service.

Q. Can't you imagine as a railroad man that the east and west travel would increase considerably?

A. No sir.

Q. If you had a reasonable passenger service on that line?

A. I don't think it would increase it any.

Q. There being approximately 40 miles of territory through the center of which this road runs east and west without any east and west passenger train?

A. I do not think it would increase it any. The passenger business, exclusive of the through business, consists of men living at small towns going to the county seat, or larger towns and returning home, and they now use the mixed service.

Q. You know that local trains in Kansas in no more thickly populated districts, have a large local traffic?

A. I do not.

Q. You are not around in Kansas very much, are you?

A. Yes sir, I am scattered over considerable of it in my territory.

Q. Don't you know it is a matter of common knowledge that the traffic is heavy on most branch lines in Kansas, that the local traffic is very heavy, especially in the eastern half of Kansas?

A. If that is correct it would save me considerable trouble in explaining the lightness of business on my Kansas branch lines of which I have several.

135 Q. It has been the policy of your company to run mixed trains not passenger trains, on several of the branches?

A. It is the policy to run mixed trains where a passenger service will not pay.

Q. Well, your company has made no attempt to make it pay, has it?

A. Yes, sir, we have, most assuredly.

Q. How do you answer this question, that other railroad lines in Kansas in like sections of country maintain a separate passenger service, and your road is the only road in Kansas which insists upon running mixed trains, how do you explain that other roads do it profitably and your road does not do it profitably?

A. I think there are other roads that maintain a mixed service on branch lines.

Q. That have a passenger service on the lines?

A. No, I think they do not have a passenger service, they maintain a mixed service on light branch lines.

Q. I think there is one on the Santa Fe, to Osage?

A. There is one there.

Q. That is the only one?

A. There is one out of Cedarvale, without referring to the time-table I could not mention them, but there are several other roads in Kansas that have branch lines where only a mixed service is maintained.

Q. You know as a general proposition that your road is earning a very nice sum per mile upon lines in Kansas, do you not?

A. On some of its lines in Kansas, yes.

Q. I say taking the average, the average earnings per mile amount to a very nice sum?

A. Including the through business handled on our other Kansas lines they do, the heavier lines of course bring up the average for the light lines, but on this particular line the earnings are not good.

136 Q. Well, if a better service were put on the Madison line and an attempt made to get your share of the business on that hundred miles of territory, then you will certainly get it, will you not?

A. Speaking from experience I can say no.

Q. I am not asking about that. You know that that is in the common knowledge of any business man, is it not?

A. I do not see any use to estimate what we will get, when we have already made an attempt to get the business by adding the service and did not get it. That seems to be the best evidence that it is not to be had.

Q. You have admitted that your service, both freight and passenger, has never been equal to the service on other lines of road through that section of the country?

A. Not equal to heavy main lines, or our own main line.

Q. That fact would certainly drive business away from your line and might make it unprofitable?

A. For instance you are speaking of the Frisco line at Pleasanton, I think they have about ten passenger trains on that line. Would I understand that you would expect us to put ten passenger trains on the Madison Branch in order to compete with that line?

Q. Not at all.

A. That is the only way we could get an equal number of trains with them.

Q. No, we expect you to put passenger trains on the Madison Branch with a reasonable schedule with proper connections?

A. We did do that.

Q. You admit your connections compelled passengers to lie over at different points if they wanted to take some other train?

A. The connections were made with a view of accommodating the greater number of passengers. It may have made a slight inconvenience to some few passengers, but it accommodated the greater number of local people.

137 Q. Have you a mail contract yet on that line?

A. No sir.

Q. When did that expire?

A. July 1st.

Q. Of this year?

A. Of this year.

Q. Why didn't you get that contract again?

A. I can't say.

Q. Don't you know that the United States Government refused to make that contract because of your poor service on that line?

A. I have understood that was the case, that they claimed the service was too slow.

Q. You know that the income on that line of road from the United States Government was something over $5,000 a year?

A. I do know what the income is from the mail on that particular line, or was, I should say.

Q. Do you know what it costs to run a train a mile on that line of road?

A. No, I have never made that calculation.

Q. That is a matter you railroad men discuss frequently and make a study of, is it not, the cost of transportation?

A. Yes, we study the cost of transportation on important lines.

Q. You have figures on that proposition haven't you?
A. Not on the Madison line.
Q. On some other line?
A. Yes, we have figures on other lines.
Q. What does it cost to run an average freight train a mile?
A. I don't know that I could answer that sufficiently accurately to go on record. It costs about sixty cents to run a passenger train a mile. A freight train depends entirely on the kind of grades, the amount of tonnage handled, the class of power, and the pay of employees which is different on light and heavy lines.
Q. When you say sixty cents per mile, what does that include, what expense?
A. That includes all of the expense, wages, fuel.
Q. That is maintenance of way and structures, main-
138 tenance of equipment?
A. Its proportion of the maintenance of the road.
Q. And that makes the cost of an average freight train sixty cents a mile?
A. A passenger train.
Q. I should have said passenger. Can you give an approximate estimate of freight trains?
A. No, I could not now.
Q. The service is less expensive on freight trains?
A. More expensive a great deal.
Q. Why is that?
A. Because it requires more men to handle the train, they handle more tonnage, the cost of repairs of equipment is greater for the reason they handle more equipment, the damage to the equipmnt is greater, the maintenance of the power is greater on account of its being heavier, everything makes it cost more.
Q. What is an average freight crew?
A. On our road an engineer, fireman, conductor and three brakemen.
Q. Three brakemen?
A. Yes sir.
Q. Isn't that one more than is usually used on a freight train?
A. Yes sir.
Q. Why do you have three men when other roads have two?
A. We inherited that custom and I have been down here ten days with a large committee of train men trying to get rid of it and we have not succeeded yet.
Q. Do you have that system all over Kansas, three brakemen to a train.
A. Not all over, on quite a large per cent. of our lines.
Q. What do you do with the third man?
A. Pay him his salary.
Q. I notice that the Central Branch of the Missouri Pacific in its sworn report to the Board of Railroad Commissioners makes the statement that the per cent. of operating expense to earnings is 55.50 per cent., making an income above gross operating expense
139 of 44.50 per cent., that is quite a handsome profit, is it not?
A. Very good.

Q. Well now that Central Branch is 342.22 miles long according to the sworn report, while the Interstate is approximately 101 miles, that is the Kansas mileage, the Interstate runs through eastern Kansas east and west, and all of the Central Branch runs through Kansas from a point west of the center to Atchison, there is just as much railroad competition in the vicinity of the Central Branch for the eastern half of Kansas as there is on this Interstate line, can you explain why the earnings are so great according to the report on the Central Branch and the operation of the Madison Branch is conducted at a loss?

A. Very easily I can explain it. There is no comparison whatever in the character of the country traversed by the two lines, the country on the Central Branch being far superior to that on the Madinson Branch, and while it is true that there is considerable competition on the Central Branch, yet our mileage compares favorably with the mileage of our competitors, and the towns we pass through compare favorably with the towns that they pass through, and for that reason we are in a position there to compete with them for the business and do compete with them for it, and do get a reasonable percentage of it, while exactly the opposite conditions confront us on the Madison Branch, poor country, small towns, a longer line of road than our competitors, and necessarily we cannot give the same class of service.

Q. Your service was extremely poor on the Central Branch?

A. I do not think so.

Q. The road bed was allowed to run down?

A. That occurred after I left there, but it was my under-
140 standing that it applied only to a very small per cent. of the mileage at one end of it near Larned.

Q. Will you furnish time-tables showing the schedule of trains over the Madison Branch, both freight and passenger, between July 1st, 1903, and April 30th, 1905, and also showing the schedule of the mixed trains from April 30th, 1905, down to the present time?

A. I have not those files in my office, I may be able to obtain them. My office was recently created and we have no files back of October, 1905. It is possible they have them here in the building.

Q. Can you have someone bring the schedules up here, I would like to have them go in the record.

A. If I can get them.

By the REFEREE:

Q. During the time there was separate passenger service in 1904 and part of 1903, was there also a mixed service, some passengers carried on freight trains?

A. No, they were carried in cabooses instead of coaches. The present mixed service consists of two coaches. Whenever we had a regular passenger train on we only furnished cabooses, but they carried passengers just the same.

By Mr. TAYLOR:

Q. What is the distance from Madison, Kansas, to Kansas City—the distance from Butler up there?

A. It is approximately 140 miles.
Q. From Butler?
A. Th-ough Leroy, the shortest connection.
Q. What is it via Butler from Madison?
A. It is about 160 miles. They may not be exactly accurate but they are close.

By the REFEREE:

Q. But in carrying freight from that line to Kansas City you divert it to some of the cross lines where the initial point is
141 west of the cross line?
A. We divert it to the shortest line, we divert it to the shortest line through the nearest junction.
Q. Does a passenger from Madison or some station east of Madison destined to Kansas City have the privilege o- taking some shorter line, or must he go around by Butler?
A. He takes the shortest line. Our tickets and freight rates are based on the short line.
Q. A passenger has the choice of lines?
A. Yes sir.
Q. A passenger from Madison would have how many different choices in going to Kansas City?
A. There would be only two he could afford to take, one by way of Butler and one by Leroy. Through Blue Mound it would bring him back practically to Leroy again.

By Mr. TAYLOR:

Q. I want to ask you about the cattle business on your line of road, what is the rule with reference to sending an engine for cars, how many cars do you send an engine to pick up?
A. On that particular branch?
Q. On that particular branch, yes?
A. I think it is three.
Q. It used to be three, did it not?
A. That was the rule.
Q. But haven't you increased the number out there?
A. I think not. I think it is three cars yet, but I am not absolutely certain of that.

By the REFEREE:

Q. If three cars of stock are to go to Kansas City they make a separate train of it?
A. To the junction, yes. It is not to exceed five, and I think it is three.

142 GEORGE H. STAPP, sworn on behalf of defendant, testifies as follows:

Direct examination by Mr. DOSTER:

Q. What is your name, residence and occupation?
A. George H. Stapp, Nevada, Missouri, Superintendent.
Q. Superintendent of what?

A. Of the Joplin Division of the Missouri Pacific Railway.

Q. How long have you been Superintendent?

A. Since December 1st, 1905.

Q. Previous to that time in what capacity have you been in the railway service?

A. I was in the maintenance of way department in special service.

Q. During what length of time as a railroad man have you been acquainted with the Missouri Pacific System in Kansas?

A. Since about June, 1905.

Q. Are you acquainted with what is called the Madison Branch of the Missouri Pacific?

A. Yes sir, that is part of my division.

Q. That is in your division?

A. Yes sir.

Q. What is the length of the Madison Branch?

A. 108 miles.

Q. From and to where does it run?

A. The Madison Branch proper runs from Monteith Junction to Madison; the train service over the Madison Branch, however, is extended between Monteith Junction and Butler, a distance of about three miles.

Q. You have terminal facilities at Butler?

A. At Butler, yes.

Q. Is that on a main line of the Missouri Pacific?

A. Yes, it is on the main line of the Joplin Division running from Pleasant Hill to Joplin.

Q. Your trains on the Madison Branch are operated out of and return to Butler, do they?

A. Yes sir, for the reason that Monteith Junction is nothing except a connection of the Madison Branch with the main line, nothing there but a switch.

143 Q. What is the necessity of operating trains to and from Butler?

Plaintiff's counsel objects to the question as immaterial, as having nothing to do with the question of expenses, &c., relative to the operation of the Madison Branch within Kansas, under a Kansas charter; objection overruled.

A. The reason for operating trains between Monteith Junction and Butler is, as I have just stated, that we cannot stop trains at Monteith Junction as there are no facilities there, not even a side track to take care of the train, and it must be taken into Butler where we have facilities for taking care of an engine and cars.

Q. I do not mean to distinguish as between Butler and Monteith Junction, why do you have to operate from Butler or Monteith, why don't you operate from some place else?

A. If I understand you right it is because we have a connection there and that would be the only connection with the Kansas end of the line. It extends from that point out to Madison.

Q. Why don't you operate for the Kansas service from some point in Kansas?

A. If we did we would have no connection, it would be an isolated line, no connection with this part of the Missouri Pacific. It might have a connection, in fact it does, with other parts of the Missouri Pacific Railroad. The principal reason is that the Madison Branch is about 108 miles long, which is the standard unit in operating railroads where you can arrive at that unit. It is the aim and desire of all railroads, especially railroads in the west, to divide up their railroad into 100 mile units. There are a good many reasons for this, but the principal reason is that the rates of pay to firemen,
144 engineers and brakemen are based on a run of 100 miles or over. Wherever there is an operating unit of less than 100 miles there is a distinct loss to the railway for the reason that we have to pay men for running 100 miles even though they run but 85 or 90 miles.

Q. Is it feasible or practicable to establish terminal facilities on the Kansas side of the Missouri line and operate from that point to Madison?

A. It is not either feasible or practicable from an operating standpoint.

Q. Why not?

A. The distance would be something like 65 or 70 miles from the Kansas line to Madison. We have no terminal facilities on the Missouri-Kansas line, and we would have to go to the expense of arranging terminals at that point, which the traffic does not justify, neither could it be connected up with other branches of the Missouri Pacific Railroad so as to properly form one of these operating units without interfering with other portions of the service.

Q. Do you know the distance from Madison Kansas to Kansas City by way of Butler over the Madison Branch line, and other portions of the Missouri Pacific?

A. From Madison to Kansas City by way of Butler?

Q. Yes?

A. It is 181 miles.

Q. Going from Butler to Kansas City where do you strike the St. Louis and Kansas City line of the Missouri Pacific?

A. At Pleasant Hill, 39 miles north of Butler.

Q. What is the distance from Pleasant Hill into Kansas City?

A. 34 miles.

Cross-examination by Mr. TAYLOR:

Q. Do you know what the distance is from Madison to Kansas City via Leroy Junction?

A. No. I would have to look at the time card to see that, part of the line is not in my territory and I would like to state that if
145 you want an accurate statement with reference to the distance between Madison and the Kansas state line I would have to look at the time card. I would state 60 or 70 miles.

Q. How long did you say you have been in railroad service?

A. With the Missouri Pacific or altogether.

Q. Altogether?

A. Twenty years in the railroad service.

Q. How long have you been acting for the Missouri Pacific and other lines of road as division superintendent?

A. In the aggregate?

Q. Yes?

A. I have been superintendent on the Missouri Pacific since December, 1905, that is the length of time I have held that particular position on any road.

Q. You have had large experience in the running of trains and the superintendence of traffic, have you?

A. I was train master on two different railroads, having the actual charge of the handling of traffic.

Q. Do you know what it costs to run a freight train a mile?

A. No sir.

Q. Do you know whether there are any accurate statistics as to that?

A. Yes sir.

Q. Where can those statistics be found?

A. In the accounting office of almost any railroad, I might say of any railroad.

Q. The cost varies with different lines?

A. Yes sir.

Q. If the grades are heavy it costs more than where the grades are light?

A. Yes sir, and there are other factors that enter into it.

Q. Do you know what the grades are and the curvatures on the Madison Branch?

A. Not without an inspection of the profile.

Q. In a general way do you know the highest grade on that line?

A. The grades on the Madison branch are not excessive.

146 Q. There is not a grade on that line that would equal one per cent., is there?

A. I think not.

Q. An ordinary engine can pull quite a large train there if necessary?

A. With the exception of between Butler and Monteith. There are some very heavy grades between those points.

Q. That is the last three miles?

A. Yes sir.

Q. And that section of the line is in Missouri?

A. Yes sir.

Q. Is there a round house at Butler?

A. There is no round house, there is a turntable and ash pit.

Q. Engines are kept there?

A. Yes sir, this engine.

Q. You say "this engine"?

A. These two engines.

Q. Only one engine on the Madison Branch?

A. Two engines, the trains run opposite.

Q. One engine is at Madison, while the other engine is at Butler at night?

A. Yes sir.

Q. What time does your mixed train leave Butler in the morning?

A. About eight o'clock.

Q. What time does the mixed train leave Madison in the morning?

A. I would have to look up my time card on that, it is early in the morning, possibly the same time.

Q. Do you know where the trains meet?

A. Being mixed trains they may meet at different places, ordinarily they meet about Blue Mound.

Q. A mixed train gathers up all business, both freight and passenger, it finds along the line of road?

A. These do.

Q. They usually do, do they not?

A. You cannot establish any definite proposition, it depends altogether on the traffic of the road and number of trains.

Q. Yes, I see that if there were a passenger service it would not be true, but on this line of road your mixed train gathers all of
147 the business?

A. Yes sir.

Q. That means that the train must necessarily do a good deal of switching at certain stations?

A. It would if it was there to do.

Q. If there is any business to do, the train is broken and switching is done, and cars in coupling up are bumped together sometimes rather savagely?

A. Not if the officials know about it.

Q. It is that fact which makes a mixed train passenger service more dangerous than a regular passenger service, is it not?

A. Well, yes, you might say it would be more dangerous if there was contributory negligence on the part of the passengers, but if the passengers sit down and keep their seats while the train is being switched there ought not to be any more danger in that than in a passenger train.

Q. But there is danger if a passenger gets up to change seats or anything like that, at the moment of contact from the coupling?

A. The same as there would be in a regular passenger train starting and stopping or coupling on to other passenger cars.

Q. As a rule there is more slack in a freight train?

A. On account of the greater length, yes sir.

Q. It is within the common knowledge of train men that the coupling together even where the utmost care is used, is apt to be a little more rough than the coupling of passenger cars, is it not?

A. I cannot agree with you altogether in that statement. It is the aim of all railroad officials to see that all switching of passenger and freight cars is handled in such manner that there will not be a particular jar, we have to do that to protect our freight shipments, and I have seen freight trains stopped, started, and coupled to-
148 gether with just as much care and just as little shock as in coupling passenger trains, and that is the object we try to attain.

Q. No doubt it is true, but it is very often violated?

A. Yes, often violated.

Q. That is the reason why a mixed train passenger service is re-

garded as more dangerous than a separate passenger service by trainmen?

A. Well, I don't know, I don't think train men consider it very dangerous.

Q. Do you know the amount of tonnage that is handled by your company over the Madison line?

A. Do you mean per train, week, month or year?

Q. Per month and per year?

A. No sir.

Q. As a superintendent do you keep the tonnage that moved over the respective divisions of your division?

A. We are not expected to, that is done by our accountants, but we frequently do.

Q. Is there a record in this office which would show the tonnage handled over the Madison line?

A. There probably is although I have never seen it. You mean in the building here?

Q. Yes. Is that account kept by the month?

A. Kept by the train.

Q. That is the Madison train which runs over that line to-day there is a record made when it gets to its destination of the number of tons that that train carried?

A. Yes sir.

Q. And that is reported, of course, to headquarters?

A. Yes sir.

Q. So that at the end of the year it can be ascertained the exact number of tons that the railroad system carried during the year?

A. Certainly.

Q. In what department is that, do you know who has the department here that would show that tonnage?

A. The superintendent of transportation is the man who is
149 in charge of the department. I believe the records are kept by the car accountant.

Q. About what is an average train on your line per day?

A. On the Madison Branch?

Q. Yes?

A. Loads or empties or both?

Q. Well, both together?

A. I should say about ten or twelve cars considering loads and empties.

Q. Of course that embraces both the local and through traffic?

A. Everything handled by the train.

Q. Do you have a passenger coach in that train?

A. Yes sir.

Q. What kind of a coach is it, an ordinary wood coach?

A. It is a good deal like other coaches we have on branch lines.

Q. Not a great, big, large, up-to-date, modern coach?

A. No, we usually put our best coaches in the territories where we have the most passenger business.

Q. Is your schedule so arranged with that mixed train so that connections can be made on any through business?

A. That is a pretty broad statement, connections can be made on some through business.

Q. Where?

A. At Butler for the Kansas City business, and at Leroy for both the northbound and south bound business, and at Blue Mound——

Q. Which way?

A. Both ways. The connections I believe are not very close, but they could be made ordinarily, and at Blue Mound for the Topeka and Ft. Scott business.

Q. You have no competition in that section of the country on east and west business in the passenger traffic or freight, either?

A. No sir.

Q. What is the closest line to you on the south?

A. The M. K. & T. runs through there and the Santa Fe.

Q. I do not mean cross lines. I mean side lines?

A. Parallel lines?

150 Q. Parallel lines. You have no competition for a wide stretch of territory on east and west business?

A. Yes sir, we compete with other lines on St. Louis business and Kansas City business.

Q. The St. Louis business is necessarily more roundabout over other lines than your line?

A. No sir.

Q. The Madison Branch the way it connects and runs over the Joplin Division, does it not get to St. Louis on less mileage than any other lines which cross it at right angles?

A. Really I don't know what the comparison of mileage would show, but if you were familiar with the freight business you would know that a competing line competing for freight traffic does not always consider the mileage, a difference of a few miles does not make much difference.

Q. I have always believed that and I am glad to know it. Do you know how far it is from Madison to Kansas City via Leroy?

A. No sir.

Q. Does that difference in length make much difference in the handling of cattle, the cattle traffic?

A. That would depend a good deal on conditions of traffic, the connections, the facilities for taking care of the traffic.

Q. You handle a great deal of cattle traffic for Kansas City?

A. Not very much on that branch.

Q. Let me ask you, how many cars do you require to be collected at one point before you send an engine to them?

A. There has been no necessity this year or since last December for running any special service that I remember. I understood before I went on that division that they would run a special for three cars, I am unable to speak of that of my own knowledge, I understand that is so.

151 Q. Have they raised the number?

A. Not to my knowledge.

Q. You think as superintendent you would send an engine out for three cars?

A. Yes sir.

Q. Are you familiar with the way that other lines of road are operated in that competing section of country?

A. No sir.

Q. I will ask you if it is not a fact within your knowledge that the service of the Madison line is inferior to the service on any line of road in that country?

A. Similar service?

Q. I am not asking about similar. I am asking if it is not inferior to the service maintained on other competing lines in that country?

A. It seems to me that you have to make a comparison with some service.

Q. I am not going to do it because there is no similar service there?

A. I don't know whether there is or not.

Q. It is a well known fact that where the service is inferior over a line to other competing service that the result is disastrous to the business of that line, isn't that true?

A. It probably is.

Q. And if your service is inferior that would account for the loss of a great deal of business?

A. I don't think that has accounted for the loss of business out there.

Q. Well it would account for it in a measure, would it not?

A. It might or it might not, it would depend a good deal on other conditions.

Q. Is it not a well known fact that gentlemanly agents and quick service and a desire to transact the business of the public promptly and speedily attracts business to a line of road?

A. It ought to.

Q. It does do it, does it not?

A. If I was a ship-er it would attract me.

152 Q. If you could install that kind of service on the Madison Line don't you think the receipts of your company would increase very largely?

A. No, I do not, I do not think the business is there.

Q. You have 100 miles of country or 109 miles including that sixteen miles in Missouri, with only eight lines of road — compete with you?

A. Yes, we have.

Q. It is a well known fact that that portion of Kansas, the eastern third of Kansas, or the southeastern half of Kansas, is a very rich country and furnishes large tonnage to railroads?

A. What kind of tonnage?

Q. All kinds of freight traffic?

A. This does not.

Q. Grain, cattle, hay, everything of that kind. You say this does not; you do not know what tonnage is given to other lines in that section, do you?

A. No sir.

Q. But it is a fact that all of the railroads in that section of country carry a very large tonnage?

A. It might be through tonnage.

Q. You know the population of the counties through which the Madison Branch runs is quite large?

A. Of the counties, you say?

Q. Yes?

A. No, I do not know it. I know the population is not very thick along the line of that road, the towns located on that road.

Q. It is a fair average population for Kansas?

A. I suppose so.

Q. And will average up per square mile in many other *many* sections of Kansas?

A. I don't doubt it.

Q. It is a good section in the eastern part of Kansas, that all makes business for railroads?

A. No, that is not the only thing that makes business.

153 Q. They produce and are there not some manufactories and other things along the line?

A. There are two or three small coal mines at Jewett and a little stock, outside of that small amount of merchandise that is about all we handle, together with hay.

Q. Don't you handle grain?

A. No sir.

Q. Is it not a very good corn country?

A. I have not discovered it.

Q. Haven't you discovered that other roads are taking the business?

A. No, I have not.

Q. Are you not able as superintendent to devise some scheme to get that business and thereby increase the earnings of the line?

A. Not when the business is not there.

Q. You stated a while ago that it does not make much difference about a freight haul being a little longer than the haul on another line, if that is true you ought to get your share of the business?

A. We probably could if it was there to get.

Q. You are not getting it, are you?

A. We are not getting very much.

Q. I will ask you if it is not a fact that people along that line feel a little incensed at your line of road for not maintaining a passenger service?

A. I think they do.

Q. Does not that fact have a tendency to drive the business away from your line to other competing lines?

A. I think so.

Q. If you removed these causes and gave the people a fine service don't you imagine that would bring the business back to you and increase your business?

A. Not to the self-sustaining point.

Q. That is not an expensive line to operate, is it?

A. I would rather some other railroad had it to operate.

Q. Well, you have got a 108 mile run there with no heavy grades?

A. No sir.

154 Q. You only carry five men in a train crew?

A. Yes sir.

Q. Do you have that many in train crews on that line?

A. Yes sir.

Q. The actual cost of running a train, the train itself, without taking into consideration maintenance of way, maintenance of equipment &c., is very light for that line of road, is it not?

A. Well, it is practically the same as running a local train or mixed train on other sections.

Q. You do not have to bestow so much labor in keeping up your track on that line as on main lines?

A. No sir.

Q. You do not employ the same number of section men on that line as you would on a main line?

A. Not ordinarily.

Q. So that the cost all the way along of maintenance is a great deal less than it would be on a main line?

A. Yes sir, it is less.

Q. Don't you think you could give a better service then and pay for it out of the profit?

A. I honestly think we could not.

Q. If you could give a service that would be anything like equal to the service given by other competing lines through that territory don't you think the revenue would increase to the point where you would make a profit on that line of road?

A. I certainly do not.

Q. Your connection at Butler or Monteith Junction for points outside of the state is a fairly good connection, is it not?

A. Yes sir, we have a number of trains there.

Q. You give a reasonably quick service from the extreme point of Madison to St. Louis or some other point?

A. We think so.

Q. Taking all these things into consideration you are still of the opinion that you cannot put a service on there that would make a profit?

A. I certainly think so.

155 Q. You arrive at that conclusion after having managed that line for several months?

A. Yes sir, I also stated the particular proposition.

Q. There is a great deal of passenger traffic that does not come to your line where they can get other roads within six or eight miles?

A. Yes sir, it is probably true, but there is an amount that would go to the other lines any how.

Q. As a matter of fact you lose a great deal of travelling men's passenger fares because of the unsuitable schedule you have?

A. Very likely.

Q. They will hire rigs and drive from one town to another and you lose local business because your train is delayed in switching and gathering up cars, &c.?

A. No, I don't think that is the particular reason.

Q. Any how the loss from that method of management is conjectural, there is no way of determining what you do lose?

A. No sir.

Q. Therefore there is no way for you to determine whether or not you could maintain that line of road at a profit if you gave a first class service, both freight and passenger, on the line, is there?

A. It is conjectural.

The Witness produces ten time cards to be made exhibits in this case.

156 WILLIAM H. V. ROSING, sworn on behalf of defendant, testifies as follows:

Direct-examination by Mr. DOSTER:

Q. What is your name, residence and occupation?

A. William H. V. Rosing, St. Louis, occupation mechanical engineer of the Missouri Pacific Railroad.

Q. How long have you been the mechanical engineer of the Missouri Pacific?

A. Since November, 1904.

Q. How long have you been a mechanical engineer in the railway service?

A. Since 1893.

Q. As a mechanical engineer have you given the subject of the construction and operation of motor cars on steam railway lines any study?

A. Yes sir, so far as publications have been concerned, I have only inspected two types of motor cars in operation.

Q. How recently did you inspect those cars?

A. I inspected one in Omaha on the Union Pacific about a year and a half ago, and one, Strang motor car, in the Union Station about four months ago.

Q. Well, from reading and from all the sources of information obtainable on such subjects you know, do you, of the progress that has been made in the utilizing of motor car service on steam railway lines?

A. Yes sir, in a general way.

Q. How nearly to a success from an operating and a financial standpoint both has motor car service on steam railway lines been brought?

A. So far as I know the motor car service on steam railway lines is merely a suburban or interurban service to correspond with street railroad service so to speak, and I have no knowledge of the cost of operation nor have I ever been able to obtain the cost of the equipment. The cost of the equipment in particular seems to be an unknown factor and undoubtedly is very high on account of the
157 cars being new and experimental and many changes are made each time a succeeding car is built. After a standard design or patent is adopted they will be able to reduce the cost somewhat, but at the present time the cost is very high.

Q. Have you a judgment on the subject of the comparative cost of motor car service on railway branch lines, I mean for passenger

service as against the regular steam passenger service on the same lines?

A. I would say a motor car could be operated more economically than a locomotive and passenger train service.

Q. Have you a judgment as to how much more economically a motor car service could be operated than a steam service?

A. No, I could not give anything sufficiently definite on that.

Q. I will ask you whether motor car service on steam railway lines has, from an operating and financial standpoint, progressed beyond the experimental stage?

A. No, I do not know. I do not think that any motor car equipment has ever been operated on a regular branch line service. As I say it has been a sort of interurban affair.

Q. Do you know of any railway lines that have regularly utilized motor cars for passenger service?

A. No, I do not.

Q. Mention was made a few minutes ago of the Union Pacific operating a motor car service, do you know anything about that?

A. I know they have built seven different motor cars and I have been told they are running in various parts of the country, some on their own road and some elsewhere, on trial, but I have no knowledge of the details of their performance or where they are running.

Q. Do you know whether they have been regularly and permanently established?

A. No sir.

158 Q. Does the Missouri Pacific Railway Co. employ motor cars on any of its branch lines?

A. Not that I know of.

Q. Do you know whether it contemplates doing so?

A. It contemplates making a trial of a new motor car.

Q. Now, as mechanical engineer of the Missouri Pacific Railway Co. have you had to do with the designing or construction of a motor car for its passenger service, for securing and installing such motor car service?

A. I have been consulted quite freely by the builders of a motor car about what the requirements for a branch line service would be to take the place of train service, and the car, which is now partially completed, has been constructed along those lines.

Q. You are having a motor car constructed for passenger service?

A. A motor car is being constructed by the St. Louis Car Co. for the Missouri Pacific Railway Co., and it is to make a trial of this motor car to demonstrate what it will do. It is a new design, entirely new design, and undoubtedly more or less experimenting will have to be done until the thing is made practical, but we hope to develop a satisfactory car through experiments and tests, which will probably be made with that car in question.

Q. Do you know on what part of the Missouri Pacific System the design is to make experiments with that motor car and to install it if it can be operated successfully?

A. No, I do not know just where they will find it to be best suited for.

Q. Within what time is it designed to put that motor car into experimental service?

A. About two weeks from to-day.

Cross-examination by Mr. TAYLOR:

Q. I do not know that I understand where you intend to experiment with it, on what line?

159 A. The experiments that will be made first will be to determine the practicability of the design, and the operation of the machinery and all that sort of thing. It will be necessary to do that, no doubt, at considerable length in view of the fact that it is an entirely new design, nothing of its kind, so far as I know, has ever been put on the market, and, from previous experience with things of that kind, I rather anticipate that it will take quite a little while making experiments in developing the thing to a satisfactory basis. The experimenting will probably be done on some piece of track best suited for the purpose. I could not say where that will be. Such experiments, no doubt, will be made by the builder of the car, the St. Louis Car Co.

Q. Have you ever examined any of the cars operated upon suburban lines, the motor cars on the suburban line you spoke of?

A. No, I said the Union Pacific car, as far as I know, was being operated as a suburban line car, not as a regular branch line car, that is to say all of the cars that I have seen called motor cars have not, for instance, been equipped with a baggage room or compartment, or a compartment car in order to handle the traffic that would be necessary to handle on a branch line. It is merely a sort of street car affair with narrow doors. The car which the St. Louis Car Co. is building will have a seating capacity for 48 people in what we call the ladies' portion of the coach, a smoking room with a capacity of twelve passengers, and will have ample baggage room capacity for baggage, mail or express, as the case may be, in addition to the boiler and engine room for operating the car. That is what we consider the requirements for a branch line service, and some of the other cars that I have spoken of have those accommodations.

Q. Now, from what you know of the Union Pacific car was

160 it a success as a motor car?

A. I do not know. They operate them right along, but as to the performance of the car, and what difficulties they may have with it, I am not conversant with those facts.

Q. The motor power part of it seems to be a success, what is the trouble?

A. That is the essential part. The Union Pacific cars use gasoline; the Strang car has a gasoline motor operating an electrical generator, and then the current is transmitted to the electric motors on the truck, that is the style of the motor completed. The car we are figuring on is a steam car to carry oil for fuel instead of coal, and will be operated by regular steam power, and will have more than double the power that any motor cars, so far as I have learned, have at the present time. The car and equipment is principally steel.

161 F. P. JOHNSON, recalled on behalf of plaintiffs for further cross-examination, testifies as follows:

Cross-examination by Mr. TAYLOR:

Q. I desire to ask you some additional questions with reference to Exhibit B introduced yesterday. That Exhibit is entitled, "Statement of earnings and expenses of passenger business of the Madison Branch, Kansas & Colorado Pacific Railway from Madison, Kansas, to Monteith Junction, Missouri, during the period May 1st, 1905, to March 31st, 1906, approximated." I understood you to testify yesterday that the keeping of a separate account as to the Madison Branch ceased on the 1st day of May, 1905, was that correct?

A. No, it ceased on the 30th of June, 1905.

Q. This table then is what might be termed a proportional table, that is the business of the whole division is first arrived at and then proportioned according to the mileage of the Madison Line?

A. It is on certain classes of expense. Commencing with the 1st of July, 1905, we changed our entire system of accounting. The expense controlled altogether by a superintendent was handled by him and charged to his division. The general expense, of course, is the expense of that division, we handle that in this office. The maintenance of way, conducting of transportation were handled by him subsequent to July 1st, and he had no means of determining what the Madison Line's proportion of that was so it was really an approximated statement so far as that is concerned.

162 C. J. MCPHERSON, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. DOSTER:

Q. What is your name, residence and occupation?

A. C. J. McPherson, St. Louis, assistant to the general manager.

Q. General manager of the Missouri Pacific Railroad?

A. Yes sir.

Q. Have you any knowledge of the design of the Missouri Pacific Company with respect to operating a motor car service on the Madison Branch line?

A. That is the intention as soon as a practicable motor car is developed.

Q. What has the Missouri Pacific Company done, or is it doing, towards developing a practicable motor car for its uses?

A. Such a car is being constructed at St. Louis now, with which we intend to experiment to see if it is practicable for the performance of such a service as the Madison Branch would require, such limited service as the demands along that road of passenger service will satisfy.

Q. How soon does the Missouri Pacific management hope to get the car out somewhere on the road for experimental purposes?

A. We have been somewhat disappointed, we expected to get it out sometime ago, now it is expected that we can make an observation

of tests of its practicability some time the latter part of this month. This is a steam motor car.

Q. The particular motive power does not especially concern us. What is the design of the company in the use of motor car service with respect to the Madison Branch?

A. The present intention of the company is to establish that kind of service just as soon as it can. It is only the question of securing a practical car that can be operated at an expense that will justify its use on that line, and I would say in this connection that the
163 company has intentions to go beyond the Madison Branch Line with this car. The conditions are such on many parts of its line that it would be very glad to get a practical solution through motor car service of furnishing the passenger service on lines similarly situated in other states.

Q. Do you know whether the use, the practical use, of motor cars on branch lines of steam railways has yet been demonstrated or whether it is still experimental and problematical?

A. It is still in the experimental stage. The newspapers and some technical journals have reported from time to time that a successful motor car has been developed, but we have always believed that those articles have rather been inspired by the builders, perhaps. It is a problem which will be solved. It is merely a question of mechanical ingenuity and a question of considerable expense. It will need a good deal of money to make experiments.

Cross-examination by Mr. TAYLOR:

Q. How many years have you been connected with the Missouri Pacific?

A. I have been connected with them on two occasions, the Gould lines covering a range of twenty-three years.

Q. You are, of course, familiar with the management and operation of railroads in all of the branches of the business, are you not?

A. In a general way, I do not know that I could qualify as an expert on some particular technical branches.

Q. Do you know of any system of bookkeeping which would keep your general office informed as to the exact condition of each branch?

Mr. DOSTER: I object to this testimony and decline to go into your testimony in the case any further than has been done.

Mr. TAYLOR: I am willing to make him my own witness.

164 Mr. DOSTER: I only object as a matter of time.

By Mr. TAYLOR:

Q. That is as to its expenses and earnings, a system which will show whether a certain branch is operated at a profit or loss?

A. That is a pretty broad question. I suppose you mean it is a question of limiting the territory in which you could show the exact results of operation?

Q. Yes?

A. It would be a difficult matter. It is a matter that can be reached with almost unerring certainty by approximation however,

and we endeavor to study the operation of every part of the line. There is nobody who has as great an interest in determining the exact cost of operation as the owners of the railroad.

Q. The Kansas & Colorado Pacific Railroad Co. is comprised of twelve different lines of railroad, all of them being consolidated into that company, now, your statistics in reference to the Kansas & Colorado Pacific Railway Co. are compiled as to all of those lines in one whole, are they not, in other words it is the design of the company to know what the business of that company is and whether or not it is maintained at a loss or at a profit without regard to the fact that there may be 100 miles of line operated at a loss in that group of roads?

A. The operating department has no interest whatever in corporate property lines. The operating department is a practical institution, and in determining the cost of its operation it wipes out any lines that interfere with operating units as far as it can. While the interest of corporate lines may be and would be a matter for the auditor, we are not interested in it in the way of operation. We operate the road by certain divisions, and those are established as the necessity of the operation requires, regardless of corporate property
165 interests.

Q. And the cost of operating a division as a rule is considered as a whole and is not segregated into divisions?

A. We would be in a very unfortunate position if we were not able to get closer operation results than that, for instance we have a line from Pleasant Hill to Joplin, a line from —— to Joplin, a line from Rich Hill to Ft. Scott, and from Ft. Scott to Cornell. The density of traffic varies in all that territory, the cost of operation varies, and the management of the company in ascertaining the cost of its operation would not be in a position to economize unless it was able to approximate closely the cost of doing business on the different branches of that one division. I want to repeat again that in practical operation divisions are created and operated to facilitate the handling of the business without any reference to corporate property lines. That would not be possible, it would not be possible to do it in any other way.

Q. The operating department has nothing whatever to do with the earnings of a line of road or of the different branches that might be included in one division, in other words, you pay no attention whatever to the earnings of the railroad?

A. We know what the earnings are.

Q. Approximately?

A. But that is a matter for the accounting department to give us information of as we ask it. What we are vitally concerned in is the cost of operation, and the traffic department is not concerned in the earnings and where they come from.

166 E. M. CURTIS, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. DOSTER:

Q. What is your name, residence and occupation?

A. E. M. Curtis, Webster Groves, Missouri, assistant general auditor of the Missouri Pacific Railway.

Q. As assistant general auditor what are your duties?

A. To keep a record of the operations of the road, and of its financial condition.

Q. You mean to keep a financial record of the operations of the road, do you?

A. To keep a record of the operations of the road and of its financial condition, a record of its finances.

Q. It has been testified and it is understood that what is called the Kansas & Colorado Pacific Railroad Co. is a separate corporation and also one of the constituents of the general Missouri Pacific System, is that correct?

A. The Kansas & Colorado Pacific is a separate corporation, or a corporation in itself.

Q. Are separate accounts of the earnings and expenses of the Kansas & Colorado Pacific Railroad Co. kept in the auditor's office?

A. They are.

Q. Have you a table or a statement of the gross earnings and gross expenses of the operation of the Kansas & Colorado Pacific Co. for recent years?

A. I have a memorandum showing the gross earnings and gross operating expenses and net earnings of the Kansas & Colorado Pacific for the year 1904, for the year 1905, and for the first five months of the year 1906.

Q. Will you produce that statement, and have the stenographer mark it as an exhibit?

A. I have it in my hand.

The paper referred to is Marked Exhibit H.

167 Q. On the paper that you have handed us are the names of quite a number of railway companies; are those companies that are included in the Kansas & Colorado Pacific corporation?

A. Those are the separate corporations consolidated in 1890 I think, or 1891, to what is now known as the Kansas & Colorado Pacific.

Q. And those various and separate corporations now comprise what is called the Kansas & Colorado Pacific Railway Co.?

A. They do.

Q. This table shows by years and the last item a five months' period, the mileage of the Kansas & Colorado Pacific Railroad, gross earnings, gross expenses, net earnings, taxes, interest on bonds and annual deficits, does it?

A. It does.

Q. Under the item of expenses taxes are not charged in this table?

A. No sir.

Q. Nor is interest on bonds charged under the head of expenses?
A. No sir.
Q. They constitute separate items apart from the expenses of operation?
A. They do.
Q. What is included here under the head of expenses is the expense of operation simply?
A. Operation and maintenance.
Q. At the time of the consolidation of the various companies into the Kansas & Colorado Pacific did the different companies have outstanding mortgage bonds?
A. They did.
Q. Did the companies that are now embraced in what is locally the Madison Branch have mortgage bonds outstanding?
A. It did. I refer now to the Interstate Railway. It was a consolidation of two corporations. I think the mortgage was given by the Interstate Railway.
Q. Are the Interstate Railway and the Madison Branch now identical in mileage?
A. They are. As I recall it there was an Interstate rail-
168 road and St. Louis and Emporia Railroad consolidated to make the Interstate Railway that is now the Madison Branch.
Q. The Interstate Railway or as we may now term it, Madison Branch, at the time of its consolidation into the Kansas & Colorado Pacific had a mortgage indebtedness?
A. Yes sir.
Q. How much?
A. $1,622,000.
Q. Does that indebtedness still subsist on that property?
A. It does.
Q. At the time of the consolidation spoken of did the various companies noted on that sheet have mortgage indebtedness to the amount stated there?
A. They did.
Q. Is that indebtedness on all those lines still subsisting in the amount stated?
A. It still exists.
Q. What rate of interest does the mortgage indebtedness on the various constituent lines bear?
A. Shall I enumerate them?
Q. Yes, do they bear different rates?
A. Yes, they do.
Q. You may state it?
A. Council Grove, Osage City & Ottawa Railway mortgage bonds draw interest at six per cent; Topeka, Salina & Western Railway, six per cent.; Council Grove, Smoky Valley & Western Railway, six per cent.; Kansas & Colorado Railway, six per cent.; Denver, Memphis & Atlantic Railway, six per cent.; Interstate Railway, six per cent.; Kansas, Nebraska & Dakota Railway, six per cent.; Wichita & Colorado Railway, six per cent.; Salina, Sterling & El Paso Railway, six per cent.; Grouse Creek Railway six per cent.; Missouri Pacific Railway in Kansas six per cent.; Fort Scott, Wichita & West-

ern Railway seven per cent., and I have noted here the indebtedness of the Pueblo & State Line Railroad, which is leased to the
169 Kansas & Colorado Pacific which draws five per cent. interest; there is also a second mortgage on the Fort Scott, Wichita & Western which is an income mortgage.

Q. Is that noted here?

A. That is noted here.

Q. In addition to the expenses of operation and maintenance noted in that table are the taxes against those various properties for the period of time mentioned noted?

A. The taxes paid by the Kansas & Colorado Pacific Railway are noted, but not of each of the constituent lines.

Q. And in addition to the item of expenses of maintenance of operation and taxes is the annual interest charge noted?

A. It is.

Q. Are those various items of earnings, expenses, net earnings, taxes and interest on bonds correctly noted in this sheet as drawn from the books in the Auditor's office?

A. They are.

Q. You have a column here headed, "Deficit," with figures under it, what do you mean by that?

A. That is the amount of taxes and interest less the net earnings in each period, in other words, the net earnings were not sufficient to meet the taxes and interest by that amount.

Q. So then the Kansas & Colorado Pacific property does not meet the expenses, its fixed charges and taxes by the amount shown in that table under the head of deficit?

A. It does not.

Cross-examination by Mr. TAYLOR:

Q. When you speak of the Missouri Pacific Railway Co., what do you mean?

A. The Missouri Pacific corporate property.

Q. I wish you would state what these corporate properties are?

A. There is the Missouri Pacific Railway Co., a corporation chartered in Missouri, Kansas and Nebraska.

Q. What does that corporation own?

A. Something over 1100, nearly 1200 miles of track.

170 Q. What relation does the Kansas & Colorado Pacific Railway Co. bear to the Missouri Pacific Railway Co.?

A. The Missouri Pacific Railway merely owns a majority of its capital stock and mortgages.

Q. Then all of the indebtedness of the Kansas & Colorado Pacific Railway Co., all of the mortgages and a majority of the stock, are owned by the Missouri Pacific Railway Co.?

A. That is approximately so. There is a piece of track of the Kansas & Colorado Pacific known as the Verdigris Valley, Independence and Western that is leased to the Missouri Pacific Railroad. The bonds on that piece of track are in the hands of the public.

Q. Is the Madison line owned by the Kansas & Colorado Pacific Railway Co.?

A. No, it is an integral part of it.

Q. And its stock and the bonds of that railroad, the first mortgage bonds, I presume there are no second mortgage bonds, are owned by the Missouri Pacific Railway Co.?

A. The bonds are owned by the Missouri Pacific and a majority of the capital stock of the Kansas & Colorado Pacific is owned by the Missouri Pacific.

Q. The Madison Branch has never been through foreclosure proceedings, has it?

A. It has not to my knowledge.

Q. And all of the counties and townships that voted aid and subscribed to the capital stock of the railroad company are still stockholders?

A. Are stockholders of the Kansas & Colorado Pacific if they have had their original stock exchanged.

Q. If they have not what would be their standing?

A. They would still have the stock of the Interstate Railroad which could be exchanged at any time.

Q. Do you know what the total mileage of the Missouri
171 Pacific is

A. Something over 6200 miles.

Q. A portion of that mileage is embraced in what is known as the Iron Mountain System, is it not?

A. Yes sir.

Q. Do they control the Iron Mountain in the same manner they do the Kansas & Colorado Pacific?

A. They do.

Q. Because they own the mortgages?

A. No, they own a majority of the capital stock, but not of the mortgages.

Q. Not the mortgages in that instance?

A. No sir.

Q. I understood you to say a moment ago that the Missouri Pacific Railway Co. owned all the mortgage bonds of the Kansas & Colorado Pacific?

A. They do with the exception of those on the Verdigris Valley, Independence and Western.

Q. Do you know what the amount of those bonds is on the Verdigris Valley, Independence & Western now outstanding?

A. $806,000 I think.

Q. Now the Kansas & Colorado Pacific Railway Co. is operated as a separate and distinct Company from the Missouri Pacific Railway Company?

A. It is.

Q. Does none of the equipment belong to the Missouri Pacific Railway Company?

A. I presume a good deal of it does as well as the equipment of almost any other road in the country.

Q. Is it not a fact that all of the equipment belongs to the Missouri Pacific Railway Company?

A. No sir.

Q. Does any portion of it?

A. Yes sir.

Q. Is not the Kansas & Colorado Pacific Railroad Company charged a rental for the use of equipment belonging to the Missouri Pacific?

A. That is true, yes sir, it is an interest valuation.

Q. Now to refer again to my other question, is it not a fact that the Kansas & Colorado Pacific Railway Company owns no equipment, I mean rolling stock?

172 A. It owns some equipment of its own.

Q. Do you know about what per cent.?

A. It is a small per cent.

Q. There is a pretty heavy rental charge made against that corporation by the Missouri Pacific Railway Co. proper?

A. It depends on what you consider a heavy charge. Possibly I could explain better by explaining the method of making the charge. All of the equipment is pooled and the valuation of the equipment is placed in a pool, and the interest on that valuation is charged up. The credit is to the owners of the equipment and the charge is to the users of the equipment. If the Kansas & Colorado Pacific used freight cars to 25% of the total mileage of the system it is charged with 25% of the interest valuation.

Q. I notice that Exhibit H states that the mileage of the Kansas & Colorado Pacific Railway Co. is 1521 miles?

A. Yes sir.

Q. In making out your report to the Interstate Commerce Commission and your report to the Board of Railroad Commissioners of the State of Kansas, is not that mileage credited to the Missouri Pacific Railway Co.?

A. The Kansas & Colorado Pacific makes its own report.

Q. Does it not make it under the head of the Missouri Pacific Railway Co.?

A. No, it makes its own report.

Q. Makes its own report?

A. Yes sir.

Q Then in the report that is made to the Interstate Commerce Commission the Missouri Pacific Railway Co. only includes such mileage as it actually owns?

A. No sir.

Q. And operates as a segregated company?

A. No, there are two kinds of reports made to the Interstate Commerce Commission, one is known as the operating report, and one is the financial report.

173 Q. What is known as the Missouri Pacific Railway Co. embraces the mileage of all these subsidiary companies, does it not?

A. It does as an operating company.

Q. And your statement of gross operating expenses would show the total operating expenses, or gross operating expenses of all these companies?

A. It would.

Q. Also show the gross earnings of all these companies?

A. It would.

Q. What would you call the difference, do you call it net profit?

A. No, I call it net earnings.

Q. Out of those net earnings you pay the taxes and interest?

A. Yes sir.

Q. This is what is called the head office of the Missouri Pacific Railway System?

A. The head operating office, yes sir.

Q. And do all of the statistics compiled and reports made come from this office?

A. Yes sir.

Q. You have recently made a report, have you not, of the business of the system for publication?

A. Not very. We published a little report of the Missouri Pacific System for the six months period ending December 31st. Our fiscal year has been changed to agree with that of the Government recently, and we will not have any report until we can make it for the operations ending June 30th of this year.

Q. Can you give the Referee the amount of the gross operating expenses for the Missouri Pacific Railway System?

A. I can.

Q. Up to what date?

A. Up to what period of time did you want?

Q. For the past year say, ending June 30th?

A. No, I can't give you the year ending June 30th, I can to May 31st, I can give you five months of this year.

Q. I wish you would give that amount and also the gross
174 earnings for the same period of time and then of course the deduction showing the net income, will you give those three items?

A. I will.

Q. If you have those compiled for the year 1905 I would like that also?

A. I can give you 1905 without much trouble.

Q. The Kansas & Colorado Pacific Railway Co. has several lines in eastern Kansas and southeastern Kansas. The traffic has been exceedingly heavy over those lines, has it not?

A. I don't believe that I would be competent to answer that question.

Q. All you know is the reports that come to your office?

A. Yes sir.

Q. All of the accounts showing receipts for freight and passenger service, of course, are sent to your office from the respective agencies?

A. Yes sir, they are.

Q. Do the expenses of the road find their way to your office?

A. They do.

Q. So that at any time you can strike a balance showing what the financial condition of the company is?

A. Yes sir.

Q. I notice that in the Globe-Democrat of Thursday morning, July 19th, there is a special dispatch from New York dated July 8th, headed "Railroad earnings," in which this statement is published

with reference to the Missouri Pacific. "May gross earnings $3,827,063.00; increase $315,774.00; operating expenses $2,465,305.00; increase $11,844.00; net earnings $1,361,758.00; increase $303,930.00; July 1st to May 31st gross earnings $40,961,908.00; increase $1,114,683.00; operating expenses $27,750,776.00; increase $120,111.00; net earnings $13,221,142.00; increase $994,572.00"; was that statement for the system prepared by this office?

A. No sir.

175 Q. Do you know where that statement came from?

A. I only know what I see there; the figures were probably made public from the New York office.

Q. You have a New York office?

A. Yes sir, we have a fiscal office there.

Q. And of course those statements are made from time to time in order that a proper valuation may be placed upon the stock of the company, isn't that a fact?

A. I don't know that I know the reason of their publication.

Q. Well, are those figures which I have just read approximately correct?

A. I should say they are, I don't know, I have not compared them.

Q. But in a general way you think they are correct?

A. Yes, sir, I have compared them as they came out and found they were correct.

Q. Then upon all of the properties of the Missouri Pacific System, which of course, includes all of these, I will call them subsidiary companies, are the earnings a very large profit?

A. It depends on what you call profits. The net earnings show for themselves as you read them and from them should be deducted the taxes and fixed charges before you can say there is a profit.

Q. I will ask you if the statement I have just read, the statement therein of the net earnings, is not the net earnings less the taxes?

A. I should say not, I should say what we term net earnings is shown on this exhibit after deducting from the earnings the operating expenses and maintenance.

By the Referee:

Q. What do you mean by fixed charges?

A. Interest on bonds and rentals.

By Mr. Taylor:

176 Q. Let me ask you, may be you cannot answer the question but I will ask it, is it not an expensive way to operate a railroad through the leasing of equipment or rental of equipment from some other company?

A. I don't know that I ought to make a reply to that question, I know from experience that having the equipment, however you may get it, produces the earnings.

Q. Can you explain why the Missouri Pacific Railway Company prefers to conduct its business in this manner rather than to foreclose and buy in properties, own them absolutely?

A. I have no knowledge on the subject.

Q. Now if the interest and taxes are not taken into account there would be quite a large net profit arising from the property of the Kansas & Colorado Pacific?

A. As is shown there in net earnings.

Q. Do you know how the Missouri Pacific Railway Co. became the owner of the majority of the stock and bonds of the constituent companies comprising the Kansas & Colorado Pacific Railway Co.?

A. By purchase.

Q. Did it go on to the market and buy those bonds and stocks?

A. I don't think so.

Q. I wish you would explain to the Referee just how that transfer was brought about?

A. As I recall it the roads out there were built under contract, and the Missouri Pacific purchased the bonds and stock from the contractors.

Q. Well, as a matter of fact, the Kansas & Colorado Pacific properties are earning more money now than they ever have earned, isn't that true?

A. I don't know. It shows a slight increase in the year 1905 over 1904, but the five months' period of 1906 will not give us a fair comparison. If the next seven months of 1906 give us earnings
177 in the same proportion per month you will have less earnings in 1906 than you had in 1905. I do not expect that though, the early months are slim months.

Q. It is a fact that the earnings were greater for the year 1905, than they were before?

A. I expect they were I can't say.

Q. And if there was a deficit for the year 1905 and for the five months of 1906 which you have compiled in this table then there has always been a deficit?

A. I should say so.

Q. What is done with that?

A. That is carried by the Missouri Pacific Railway Co.

Q. As an accumulated or an accumulating debt?

A. They have had it to pay.

Q. Who has?

A. The Missouri Pacific Railway.

Q. How did they pay it?

A. They have paid it in paying the interest on their own indebtedness, they have had to raise the money to acquire the bonds.

Q. The fact of it is that the original cost to the Missouri Pacific Railway Co. was the cost of construction, that is in cash?

A. How is that?

Q. I say as a matter of fact the cost of these railroads to the Missouri Pacific Railway Company was the cost of construction?

A. That is practically it.

Q. The Kansas & Colorado Pacific, though, before the formal transfer was made to the Missouri Pacific Company issued first mortgage bonds to the extent of so many thousand dollars per mile, whatever it may be?

A. The integral portions of the Kansass & Colorado Pacific issued their bonds in that way.

Q. Then all that indebtedness was transferred to the Missouri Pacific Company really at and for the cost of the construction of the line?

A. Practically, yes.

Q. Those bonds in excess of the cost of construction represent really no outlay?

178 Mr. DOSTER: I object to this as irrelevant and immaterial because it is not possible to involve in this inquiry an adjustment of equities.

The REFEREE: I think it is proper in view of the fact that the statement lets in that indebtedness.

(Question read.)

A. I don't know that there is any excess.

By Mr. TAYLOR:

Q. Well, those lines are practically built on the surface of the ground?

A. I don't know as to that.

Q. Built with light steel, and the cost of construction was very light?

Defendant's counsel objects to the question for the reasons given before.

Q. In your report to the Board of Railroad Commissioners you give the cost of construction?

A. We give the cost of the road.

Q. What does that include?

A. That was the cost to the corporation being its capitalization. If they issued a million bonds, and a million dollars worth of stock that would be shown in the capitalization of the road and also the cost of the contract.

Q. And in that statement of cost you do not purport to give the actual cost of the road and equipment.

Defendant's counsel objects to the question as irrelevant and immaterial; objection overruled.

A. I don't know that the corporation would know the actual cost of construction. The roads were being built under contract and the contractors probably could give the actual cost.

Q. Well, if it was built under a contract by a construction company, haven't you some record which would show that cost?

A. No sir.

Q. You have kept no record at the general offices——

A. We didn't have any.

179 Q. Showing the actual cost of each one of the lines?

A. No sir.

Q. Do you know how that could be ascertained? What has become of the original companies?

A. I don't know. Fitzgerald & Mallory was the company which built a large portion of those lines. They had headquarters for a number of years in Iowa. Simmons & Sidell were contractors. I

don't know where they are, dead I imagine. Both of the Fitzgerald & Mallory partners are dead.

Q. Passing from that I have here what is called Exhibit G., showing the revenue from the Madison Line from May, 1905 to March 1906, inclusive, was that prepared in your office?

A. I- was.

Q. Under your supervision?

A. Not under my direct supervision, it was prepared in the office.

Q. Do you know whether or not this exhibit includes all the shipments that went to the Madison Line no matter what the point of origin was?

A. Yes sir.

Q. Do your agents keep a record showing where all the goods are shipped from?

A. I am afraid that you could not find the point of origin in all cases. If I may explain, goods may be way-billed from St. Louis that would show St. Louis as the point of origin, where, as a matter of fact, it may have come from the east, the billing might not show it came from Columbus or points east of St. Louis.

Q. The point I wanted to make was this, this purports to show all goods shipped to the respective points on the Madison Line in the State of Kansas; does the station agent when he receives goods make an entry upon any book or report showing the point from which the goods were consigned to his place?

A. He has the very best kind of record in the way-bill itself.

Q. They make monthly reports to your office?

A. They do.

Q. Do you think that this is accurate as far as the ship-
180 ments are concerned?

A. Yes sir.

Q. Do you think that any shipments that should be credited to the Madison Line have been left out of the statement?

A. No sir.

Q. For the time that it purports to cover?

A. No sir.

Q. So you think that this statement is absolutely correct as to the proportion of earnings which should be credited to the Madison line?

A. I do.

Q. According to its mileage in comparison with the length of the haul?

A. Yes sir.

Q. As auditor do you keep an account of the salaries paid to agents?

A. We do.

Q. Do you know how many salaried agents you have on that line in Kansas?

A. I could tell from our records, I do not recall right now.

Q. I wish you would look that up. I would like to have it in the record.

Defendant's counsel objects to this as not proper cross-examination.

Q. I would like for you to make a statement, you can make it in the form of an exhibit or a verbal statement to the Referee so it may go into the record. I would like to know the number of agents and the salary paid to each on the Madison line in Kansas, and I would like to know the number of section men employed upon the track?

A. That will be harder, that will take more time.

Q. I would like to know the number of train men paid from April 30th, 1905, down to the present time, and the same period of time to cover the agents, that means from Butler. I would like one thing more, and I do not know that you can give me the information
181 from your books, I want to know whether there have been any repairs made upon the Madison line during the years 1905 and 1906?

A. I presume there have been repairs right along, daily and weekly.

Q. They are charged up to some account?

A. Yes sir.

Q. That comes in maintenance of way?

A. Yes sir.

Q. I would like to know the amount?

A. The section men are all employed there.

Q. That goes in the way of salary; I want the material if there has been material charged up in that length of time, I would like to have that?

A. I am afraid I cannot give you that for the full period.

Mr. DOSTER: We have no objection whatever to the witness furnishing it, and, of course, it is admissible evidence when offered by the State. This, however, is not *cross*-examination of the witness. I have no objection to his using the witness for the purpose desired provided it can be furnished before the testimony is closed this evening, but if it is going to protract the examination I want Mr. Taylor to make that his own evidence. It is true that under the order appointing the referee he has power to pass on objections to evidence with the reservation, however that the evidence objected to may be heard subject to the consideration of the objection by the Court, so that all evidence unless it may be evidence that is not proper cross-examination is to be allowed by the Referee. He may consider it or not consider it when the time comes. I do not think that applies to evidence for the plaintiff in making its own case. It cannot be evidence offered under the guise of cross-examination, it is evidence for the State and except under the reservation I have made I object to the evidence asked for.

The REFEREE: Your objection is good as not being cross-examination. It would have to come in by consent. If we can do
182 that it would be a convenience to all.

183 F. P. JOHNSON, recalled on behalf of the plaintiffs for further cross-examination, testifies as follows:

Cross-examination resumed by Mr. TAYLOR:

Q. You made no report in detail showing the expenses of carrying on the service upon the Madison Line, did you?

A. No further detail than that for the eleven months mentioned there.

Q. Now, when you say freight expenses here what do you mean by that?

A. We mean the proportion of total expense we charge to freight which includes items similar to those in the 22 months statement subdivided under four general classifications.

Q. As I understand you are at the head of that department of the auditor's office which keeps the accounts relative to all of the expenses of operation?

A. So far as the superintendents' territories are concerned. I might explain that the expenses are kept in the general auditor's office in two different departments, one to enable us to compile our statements of operating superintendents' territories, and the other financial exhibits by corporate lines. The expenses, however, are the same in both departments, and derived from the same source.

Q. What I want to get at is this, this statement shows that for May, 1905 the freight earnings were $1581.50, and it shows the freight expenses were $7297.09, how did you get that $7297.09?

A. Well, it comes from various sources, pay-rolls——

Q. Now, let us take the pay-rolls for instance, do you know how many men are paid?

A. No sir.

Q. Could you tell from your record how many salaried men you have, of course I asked Mr. Curtis that question, but perhaps you know?

A. No, I could not say, it is too indefinite, we might have 25% more next month than this month and they will vary in that proportion. It would depend on the season of the year.

184 Q. You say you might have 25% more, that is true if working on the track, or making repairs, building depots or something, you have not built any new depot along that line for the last four or five years?

A. I can't answer that question.

Q. Who can?

A. I suppose the superintendent would be the best man to answer that.

Q. Is he here?

A. No sir.

Q. What superintendent?

A. The superintendent of that particular division, on the Nevada division.

Q. That is who?

A. Mr. Stapp. It would not necessarily require the building of a

depot to increase the force, ordinary repairs to the track, the natural wear and tear, would call for an increase in the force now and then.

Q. Is it not a fact that you have had no men on that track for a large portion of the time?

A. I can't answer that question, I don't believe that is the fact.

Q. Then it would be impossible for you to itemize that account or that charge?

A. The number of men employed would be impossible, yes sir.

Q. How do you know it is accurate?

A. I know what the expense is for, but I cannot tell you off hand from our records the number of men employed in the expenditures, a great deal of it is for material.

Q. You could analyze that charge, could you?

A. Yes sir.

Q. But in order to make an itemized statement it would require considerable time, would it not?

A. Yes sir, I could not estimate the exact amount of time it would require.

Q. Could you state it approximately?

A. Well, I would not undertake to do it in less than from three weeks to a month.

Q. You would not be competent to testify as to the respective items of expense until you had made a thorough investigation of the tabulation?

A. No sir.

185 Redirect examination by Mr. DOSTER:

Q. Have you made an examination of the books of your office and ascertained the gross earnings and gross expenses of the Kansas & Colorado Pacific Railway during any specified period of time?

A. Yes sir.

Q. What time?

A. During the period from July, 1903, to March, 1906, both inclusive.

Q. Do you have the tabulation or statement of those gross earnings and expenses?

A. Yes sir.

Q. Is that the paper which you hold in your hand?

A. Yes sir.

Q. This as is indicated is by months, is it?

A. Yes sir.

Q. I see that there is an item headed "Surplus" applied to all these months excepting four that are noted as deficiency, what do you mean by surplus and deficiency?

A. It is the net earnings after deducting operating expenses from gross earnings.

Q. After deducting operating expenses, what do you include in operating expenses?

A. Operating expenses, as we understand, simply means the actual cost of operating the road.

Q. Train operation or maintenance?

A. All of it, maintenance of tracks and operation of trains.

Q. So there appears to be during the period of time mentioned a surplus of earnings over expenditures save for the four months indicated here?

A. Yes sir.

Q. And a total of earnings over expenses for the period of time stated of $2,559,902.77; now, in the operation of this table was any account taken of taxes on the Kansas & Colorado Pacific property and fixed charges?

A. No sir.

Q. So that, in order to ascertain whether a profit has been realin the operation of that property during the period of time mentioned the taxes chargeable against the property and paid
186 and the fixed charges against the property during the period of time mentioned must be deducted?

A. Yes sir.

The paper produced by the witness is marked Exhibit I, and offered in evidence by defendant.

Recross-examination by Mr. TAYLOR:

Q. I will ask you three or four questions in reference to the paper. You made the table yourself?

A. Yes sir, it was made in our office.

Q. From books in your office?

A. Yes sir. Let me correct that, I say I made it, I called for it from one of my clerks, I told him just what I wanted, wrote in the headings and he filled in the figures from our books.

Q. You have an account, of course, of all gross earnings of the Kansas & Colorado Pacific Railway Co. and also of the gross expenses in your office?

A. In the auditor's office.

Q. And of course when you get the two items, the operating expenses and gross earnings, the surplus is a deduction made from the first two?

A. Yes sir.

Q. Now the title gross earnings or column gross earnings, that is an approximate estimate of course, is it not?

A. Well, I doubt whether I can answer that question. It is our record of gross earnings, it is something I have nothing to do with. I do not care to make an explanation of it, I do not handle them at all.

187 E. M. CURTIS, recalled on behalf of plaintiffs for further cross-examination, testifies as follows:

Cross-examination resumed by Mr. TAYLOR:

Q. After having examined the statement published in the St. Louis Globe-Democrat of July 19th can you state that it is correct?

A. It is practically correct, with the exception of the statement of net earnings, where there seems to be a typographical error of $10,000.

Q. Is that error less or more than the amount stated, is the amount stated too large or too small?

A. The amount stated is in excess by $10,000.

By Mr. DOSTER:

Q. But I understand there is a difference between net earnings and net profits, that from the statement of net earnings is to be taken the taxes and fixed charges?

A. I believe that has been stated.

It is stipulated and agreed that the part of Exhibit G, written with pen and ink and consisting of detailed statements of freight earnings need not be copied, but may be furnished to the Referee as the original.

EXHIBIT A.

Statement of Earnings and Expenses of Passenger Business of the Madison Line of the Kansas and Colorado Pacific Ry. from Madison, Kansas, to Monteith Junction, Mo., During the Period July 1st, 1903, to April 30th, 1905, Approximated.

Months.	Passenger earnings. Ticket sales, excess bag'ge, etc.	U. S. mail earnings.	Express earnings.	Grand total.	Passenger expenses.	Net passenger earnings.
July, 1903	1149.80	410.55	439.83	2000.18	4430.91	Deficit 2430.73
August "	1221.83	410.55	512.86	2145.24	4459.05	" 2313.81
September "	1361.24	397.39	485.89	2264.43	4426.11	" 2161.68
October "	1114.38	410.55	358.64	1863.57	4795.52	" 2931.95
November "	1017.22	397.39	356.55	1771.16	5082.15	" 3311.06
December "	1374.46	410.55	332.11	2004.12	5184.29	" 3090.03
January 1904	1175.25	415.06	425.32	2015.63	5301.39	" 3285.76
February "	1075.50	388.29	304.23	1766.02	5388.47	" 3622.45
March "	1054.14	415.06	345.44	1814.64	5361.15	" 3546.49
April "	712.62	401.67	339.86	1454.15	5854.80	" 4400.65
May "	1070.55	415.06	313.05	1798.66	6018.51	" 4219.85
June "	1016.00	401.67	400.68	1819.34	6141.18	" 4321.84
July "	1273.46	410.55	372.05	2056.06	7264.25	" 5208.19
August "	1322.95	410.55	400.78	2134.28	6032.31	" 3898.03
September "	1263.75	397.39	332.25	2993.08	6905.00	" 3871.92
October "	1093.94	410.55	397.76	1902.25	6217.33	" 4315.08
November "	1020.84	397.39	352.81	1770.08	8056.02	" 6285.04
December "	1385.01	410.55	352.35	2148.81	6157.08	" 4008.27
January 1905	1055.51	419.67	349.14	1824.32	5206.59	" 3382.27
February "	616.56	379.06	259.17	1254.79	5880.14	" 4625.35
March "	911.96	419.67	328.61	1660.24	5476.48	" 3816.24
April "	780.89	401.67	297.14	1479.70	5488.24	" 4008.54
Total	$24064.55	$930.48	$876.55	$4171.58	$124,166.84	" $82995.26

Analysis of Passenger Expenses.

Maintenance of Way and Structures	$59,054.50
Maintenance of Equipment	5,174.35
Conducting Transportation	32,282.08
Contingencies	18,845.62
General Expenses	8,810.29
Grand Total as shown above	$124,166.84

Accounting Department, St. Louis, Mo., Nov. 2nd, 1905.
(Signed)

S. B. SCHUYLER, *General Auditor.*

EXHIBIT B.

Statement of Earnings and Expenses of Passenger Business for that Portion of the Madison Line of the Kansas & Colorado Pacific Ry. from Madison to the Kansas State Line, During the Period July 1st, 1903, to April 30th, 1905, Approximated.

Months.	Passenger earnings.				Passenger expenses.	Net passenger earnings.	
	Ticket sales, excess bag'ge, etc.	U. S. Mail earnings.	Express earnings.	Grand total.			
July 1903	$72.85	347.38	372.14	1692.37	3748.99	Deficit	2056.62
August "	1033.79	347.38	433.93	1815.10	3772.80	"	1957.70
September "	1168.67	336.16	411.11	1915.94	3744.93	"	1828.99
October "	942.88	347.38	286.52	1576.78	4057.49	"	2480.71
November "	800.67	336.16	301.68	1438.51	4290.99	"	2801.48
December "	1143.47	347.38	281.00	1771.85	4386.35	"	2614.50
January 1904	994.38	351.19	359.86	1705.43	4485.51	"	2780.08
February "	1108.20	328.54	257.41	1894.14	4559.18	"	3064.94
March "	891.91	351.19	294.28	1545.38	4536.05	"	30[illegible]
April "	692.95	339.86	287.56	1239.37	4959.75	"	3[illegible]
May "	905.79	351.19	294.87	1521.85	5092.26	"	3[illegible]
June "	869.18	339.86	339.02	1539.36	5196.05	"	3[illegible]
July "	1077.47	347.38	314.79	1739.64	6146.28	"	4406.64
August "	1119.35	347.38	389.87	1856.60	5103.94	"	3247.34
September "	1060.07	336.16	305.73	1770.96	5041.99	"	3271.03
October "	955.58	347.38	336.54	1639.50	5290.48	"	3650.98
November "	863.73	336.16	208.4	1408.45	4816.20	"	3407.77
December "	1172.64	347.38	298.12	1818.14	5099.51	"	3281.37
January 1905	863.07	555.09	295.41	1543.57	4403.20	"	2861.63
February "	523.87	329.73	292.36	1044.76	4068.26	"	3023.50
March "	771.64	355.09	278.04	1404.74	4033.65	"	3228.91
April "	660.71	339.86	251.41	1251.98	4643.69	"	3391.02
Total	$20361.05	7556.28	6018.19	34835.50	105057.56	"	70222.06

Analysis of Passenger Expenses.

Maintenance of Way and Structures	$49,966.01
Maintenance of Equipment	4,378.02
Conducting Transportation	27,313.87
Contingencies	15,945.28
General Expenses	7,454.38
Grand Total as shown above	$105,057.56

Accounting Department, St. Louis, Mo., Nov. 2nd, 1905. (Signed) S. B. SCHUYLER, *General Auditor.*

EXHIBIT C.

Statement of Earnings and Expenses of Passenger Business of the Madison Line of the Kansas & Colorado Pacific Ry. from Madison, Kansas, to Monteith Junction, Mo., During the Period July 1st, 1903, to April 30th, 1905, Approximated.

Months.	Passenger earnings.				Passenger expenses.	Deficit.
	Ticket sales, excess bag'ge, etc.	U. S. mail earnings.	Express earnings.	Grand total.		
July 1903						
August "	1421.55	410.55	439.85	2271.93	4430.91	2158.98
September "	1812.62	410.55	512.86	2736.03	4459.05	1723.02
October "	1873.25	397.30	485.89	2756.42	4426.11	1669.69
November "	1526.16	410.55	338.64	2275.35	4795.52	2520.17
December "	1379.51	397.30	356.55	2133.36	5082.13	2948.77
January 1904	1565.26	410.55	342.11	2307.92	5184.20	2876.28
February "	1408.84	415.06	425.32	2249.22	5301.39	3052.17
March "	1232.85	388.29	304.23	1925.37	5388.47	3463.10
April "	1362.89	415.06	345.44	2123.39	5361.13	3237.74
May "	1043.18	401.67	339.86	1784.71	5854.80	4070.09
June "	1321.82	415.06	313.05	2049.93	6018.51	3968.58
July "	1204.50	401.67	400.68	2006.85	6141.18	4134.33
August "	1543.76	410.55	372.05	2326.36	7294.25	4967.89
September "	1961.25	410.55	460.78	2832.56	6032.31	3199.75
October "	1714.85	397.30	432.25	2544.40	5965.09	3420.69
November "	1837.06	410.55	397.76	2645.37	6217.33	3571.96
December "	1360.93	397.30	352.84	2111.07	8056.02	5944.95
January 1905	1337.47	410.55	352.35	2100.37	6157.08	4056.71
February "	1069.91	410.67	349.14	1778.75	5206.50	3427.84
March "	797.70	379.09	239.17	1415.92	5860.14	4444.12
April "	1179.08	410.67	328.61	1927.36	5476.48	3549.12
	992.57	401.67	287.14	1681.38	5488.24	3806.86
Total	$30877.09	8930.48	8176.55	47984.12	124166.84	76182.72

Analysis of Passenger Expenses.

Maintenance of Way and Structures	$59,054.50
Maintenance of Equipment	5,174.35
Conducting Transportation	32,282.08
Contingencies	18,845.62
General Expenses	8,810.29
Grand Total, shown above	$124,166.84

Statement of Earnings and Expenses of Passenger Business for that Portion of the Madison Line of the Kansas & Colorado Pacific Ry. from Madison, Kans., to the Kansas State Line, During the Period July 1st, 1903, to April 30th, 1905, Approximated.

Months.		Passenger earnings.				Passenger expenses.	Deficit.
		Ticket sales, express, baggage, etc.	U. S. mail earnings.	Express earnings.	Grand total.		
July	1903.	$1269.00	$347.38	$172.14	$1929.12	$3748.99	$1819.87
August	"	1542.39	347.38	433.80	2323.67	3772.80	1449.13
September	"	1263.93	336.16	411.11	2341.20	3744.93	1403.73
October	"	1298.61	347.38	286.72	1932.51	4057.49	2124.98
November	"	1173.82	336.16	301.68	1811.66	4299.99	2488.33
December	"	1331.88	347.38	281.09	1960.26	4386.35	2426.09
January	1904.	1198.78	351.39	359.86	1910.83	4485.51	2577.68
February	"	1049.03	328.54	257.41	1634.98	4559.18	2924.20
March	"	1159.08	351.39	292.28	1803.15	4536.05	2732.90
April	"	887.64	339.86	287.56	1515.06	4653.75	3138.69
May	"	1124.74	351.39	264.87	1740.80	5092.26	3351.46
June	"	1025.94	339.86	339.02	1704.79	5196.05	3491.26
July	"	1315.59	347.38	314.79	1977.76	6146.28	4170.52
August	"	1068.81	347.38	380.87	2409.06	5303.94	2907.88
September	"	1459.17	336.16	305.74	2101.06	5046.99	2945.93
October	"	1563.10	347.38	336.58	2247.07	5260.48	3013.41
November	"	1158.04	336.16	298.54	1792.74	6816.20	5023.46
December	"	1138.05	347.38	298.12	1783.55	5209.51	3425.96
January	1905.	859.36	351.39	295.41	1506.86	4905.30	3398.44
February	"	678.84	339.74	282.36	1291.93	4058.26	2766.33
March	"	1003.28	355.09	278.04	1636.41	4633.65	2997.24
April	"	836.07	339.86	251.41	1427.34	4643.60	3216.26
Total		$26273.31	7558.28	6918.19	40747.78	105057.56	64309.78

Analysis of Passenger Expenses.

Maintenance of Way and Structures	$49,966.01
Maintenance of Equipment	4,378.02
Conducting Transportation	27,313.87
Contingencies	15,945.28
General Expenses	7,454.38
Grand total, shown above	$105,057.56

Statement of Earnings and Expenses of Passenger Business of the Madison Line of the Kansas & Colorado Pacific Ry. from Madison, Kansas, to Monteith Junction, Mo., During the period May 1st, 1905, to March 31, 1906, Approximated:

Months.	Passenger earnings.				Passenger expenses.	Deficit.
	Ticket sales, excess bag'ge, etc.	U. S. mail earnings.	Express earnings.	Grand total.		
May, 1905	606.16	415.48	387.62	1409.26	3330.00	1920.74
June, "	700.86	402.09	388.10	1497.05	2652.60	1155.55
July, "	825.16	410.97	417.13	1653.26	3357.39	1704.13
August, "	761.81	410.98	406.78	1639.57	3200.88	1561.31
September, "	698.74	397.71	460.61	1527.06	3466.45	1939.38
October, "	741.08	410.97	410.74	1562.79	3774.91	2211.12
November, "	628.65	397.71	367.37	1393.73	3807.15	2413.42
December, "	872.09	410.98	357.51	1640.58	3446.25	1805.67
January, 1906	762.59	420.10	412.76	1595.45	3315.31	1719.86
February, "	750.86	379.40	356.43	1486.75	3284.97	1798.22
March, "	814.41	420.10	299.84	1534.35	3350.08	1815.73
Total	8158.20	4476.50	4304.89	16939.64	37609.77	20670.13

Analysis of Passenger Expense.

Maintenance of Way and Structures	$6,989.64
Maintenance of Equipment	6,245.72
Conducting Transportation (includes Traffic)	20,204.14
General Expenses	3,550.27
Grand Total, Operating Expenses shown above	$37,059.77

To Mr. A. W. Sullivan, General Manager, Building.

Accounting Department, St. Louis, May 18, 1906.

(Signed) S. B. SCHUYLER

Statement of Earnings and Expenses of Passenger Business for that Portion of the Madison Line of the Kansas & Colorado Pacific Ry. from Madison, Kans., to the Missouri State Line During the Period May 1st, 1905, to March 31st, 1906, Approximated:

Months.	Passenger earnings.				Passenger expenses.	Deficit.
	Ticket sales, excess baggage, etc.	U. S. mail earnings.	Express earnings.	Grand total.		
May, 1905	515.78	333.34	357.97	1,197.29	2,827.51	1,630.23
June, "	691.47	442.14	458.37	1,271.98	2,244.36	972.38
July, "	702.15	340.69	352.93	1,404.75	2,840.09	1,435.34
August, "	484.05	340.70	304.94	1,392.69	2,708.10	1,315.41
September, "	569.02	338.41	389.72	1,297.15	2,955.79	1,658.64
October, "	620.58	340.70	347.53	1,327.81	3,103.14	1,805.30
November, "	504.92	338.41	310.86	1,184.19	3,272.00	2,087.80
December, "	740.06	340.70	302.49	1,304.25	2,507.41	1,203.16
January, 1906	630.89	307.81	340.23	1,355.59	2,795.08	1,439.49
February, "	678.91	322.88	284.65	1,210.44	2,777.72	1,561.28
March, "	692.98	307.87	253.09	1,304.14	2,894.50	1,590.36
Total	6,924.79	4,000.75	3,842.75	14,971.24	31,356.27	16,389.03

Analysis of Passenger Expenses.

Maintenance of Way and Structures	$5,897.01
Maintenance of Equipment	5,284.51
Conducting Transportation (includes Traffic)	17,170.87
General Expenses	3,003.88
Grand Total, Expenses shown above	$31,356.27

To Mr. A. W. Sullivan, General Manager, Building. Accounting Department, St. Louis, May 18th, 1906.

(Signed) S. B. SCHUYLER,
General Auditor.

194 EXHIBIT G.

Statement of Freight Earnings and Expenses of the Kansas Portion of the "Madison Line" of the Kansas & Colorado Pacific Ry. for the Period May 1st, 1905, to and Including March 31st, 1906, by Months.

Months.		Freight earnings.	Freight expenses.	Deficit.
May,	1905	$1,581.50	$7,297.09	$5,715.59
June,	"	1,655.50	6,883.47	5,227.97
July,	"	2,418.35	9,079.52	6,661.17
August,	"	2,374.46	8,353.46	5,979.00
September,	"	2,185.63	8,881.19	6,695.56
October,	"	1,983.58	9,619.12	7,635.54
November,	"	2,306.16	9,823.32	7,517.16
December,	"	2,114.56	9,643.10	7,528.54
January,	1906	2,165.81	8,400.57	6,234.76
February,	"	1,688.61	8,168.47	6,479.86
March,	"	1,895.23	8,853.04	6,957.81
* Total—11 months		$22,369.39	$95,002.35	$72,632.96

*These total earnings and expenses appear in letter of General Auditor to General Manager—dated June 16, '06, file 1002

Kansas and Colorado Pacific Railway.

	Mileage.	Earnings.	Expenses.	Net earnings.	Taxes.	Interest on bonds.	Deficit.
1904	1,521	$5,829,554.11	$5,085,193.37	$744,360.74	$304,312.05	$1,463,720.00	$1,023,671.31
1905	1,521	5,964,199.97	4,967,563.47	996,636.50	314,148.49	1,463,720.00	781,171.99
5 Mos. 1906	1,521	2,421,720.87	2,084,232.10	337,488.77	160,462.91	614,883.33	437,857.47

Council Grove, Osage City & Ottawa Ry.		$1,110,000.00	6%	$66,600.00
Topeka, Salina & Western R. R.		1,273,000.00	6	76,380.00
Council Grove, Smoky Valley & Western Ry.		417,000.00	6	25,020.00
Kansas & Colorado R. R.		2,041,000.00	6	122,460.00
Denver, Memphis & Atlantic Ry.		6,561,000.00	6	393,660.00
Interstate Ry.		1,622,000.00	6	97,320.00
Kansas, Nebraska & Dakota Ry.		2,055,000.00	6	123,300.00
Wichita & Colorado Ry.		705,000.00	6	42,300.00
Salina, Sterling & El Paso R. R.		600,000.00	6	36,000.00
Grouse Creek Ry.		376,000.00	6	22,560.00
Missouri Pacific Ry. in Kansas		300,000.00	6	18,000.00
Fort Scott, Wichita & Western Ry.		4,686,000.00	7	326,620.00
Pueblo & State Line R. R.		2,270,000.00	5	113,500.00
				$1,463,720.00
Ft. Scott, Wichita & Western Ry. 2nd Mortgage		1,000,000.00	Income	
		$24,986,000.07		
Ver. Val., Ind. & West. R. R. 1st Mtge.	$806,000.00			
Capital Stock	$25,498,100.00			

196 EXHIBIT I.

Statement of Earnings and Expenses of the Kansas & Colorado Pacific Railway Co. for the Period July 1st, 1903, to March 31st, 1906.

	Gross.		Per cent. of expenses to earnings.	Surplus.
	Earnings.	Expenses.		
July, 1903.....	529,805.89	374,028.61	70.6	155,777 28
August, "	584,501.33	417,964.25	71.5	166,537.08
September, "	574,815.81	451,271.18	78.5	123,544.63
October, "	533,845.71	457,294.72	85.7	76,550.99
November, "	506,776.39	470,523.24	92.8	36,253.15
December, "	486,844.32	303,507.64	62.3	183,336.68
January, 1904.....	427,768.24	443,121.93	103.6	Def. 15,353.69
February, "	437,555.85	382,170.65	87.3	55,385.20
March, "	454,981.21	376,753.42	82.8	78,227.79
April, "	407,032.71	376,432.58	92.5	30,600.13
May, "	423,618.67	381,276.40	90.0	42,342.27
June, "	404,093.08	387,893.48	96.0	16,199.60
July, "	471,089.47	393,470.48	83.5	77,618.99
August, "	596,757.98	422,915.59	70.9	173,842.39
September, "	600,890.28	435,161.16	72.4	165,729.12
October, "	590,508.86	497,576.05	84.3	92,932.81
November, "	543,096.82	512,134.52	94.3	30,962.30
December, "	472,160.94	476,287.11	100.9	Def. 4,126.17
January, 1905.....	392,144.83	395,447.59	100.8	" 3,302.76
February, "	351,852.59	368,366.03	104.7	" 16,513.44
March, "	463,395.92	353,641.36	76.3	109,754.56
April, "	420,241.81	365,869.45	87.1	54,372.36
May, "	458,075 76	366,950.90	80.1	91,124.86
June, "	446,075.87	367,613.00	82.4	78,462.87
July, "	584,152.24	442,521.97	75.8	141,630.27
August, "	594,598.49	447,507.06	75.3	147,091.43
September, "	554,241.56	475,823.87	85.9	78,417.69
October, "	615,495.88	478,016 00	77.7	137,479.88
November, "	592,909.54	499,103.01	84 2	93,806.53
December, "	480,813.88	409,423.56	85.2	71,390.32
January, 1906.....	492,910 02	463,323.02	93.9	29,587.00
February, "	455,580.75	433,295.75	95.1	22,285.00
March, "	451,188.02	413,232.57	91.6	37,955.65
Total.....	16,399,820.72	13,839,917.95	84.4	2,559,902.77

197 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.*
vs.
MISSOURI PACIFIC RAILWAY CO.

Before Hon. T. F. Garver, Referee.

* * * * * * *

Pursuant to order of the Referee and agreement of the parties, the further taking of testimony was resumed at Mound City, Kansas, at half past nine o'clock a. m., Tuesday, August 7, 1906, in the district court room of Linn County, Kansas.

Present:

For the State of Kansas, Mr. Carr Taylor, Attorney for the Board of Railroad Commissioners of the State of Kansas.

For the Missouri Pacific Railway Company, Judge Frank Doster, its attorney.

The Referee and his stenographer were also present.

* * * * * * *

198 W. H. BONNETT, called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. TAYLOR:

Q. State your name?
A. W. H. Bonnett.
Q. What official position do you hold in your county?
A. County Clerk.
Q. That is, of Greenwood County?
A. Yes sir.
Q. How long have you been county clerk?
A. Since the 9th day of January, 1905.
Q. Does the Madison line of railway run into your county?
A. Yes sir.
Q. To what point?
A. Madison is the terminus.
Q. About how many miles of that railroad are in your county? approximately?
A. About ten or ten and a half, I think.
Q. Did you prepare an abstract from your records showing the amount of bonds voted to the Madison line by your county or by townships in your county?
A. I did, yes, as near as I could.
Q. Was it a county proposition or a township proposition?
A. Township proposition.
Q. I wish you would state to the court the name and number of townships that voted aid and the amount that each voted to this line of road.

Mr. DOSTER: The defendant objects to the question because it calls for irrelevant and immaterial evidence.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

199 A. Shell Rock Township voted fifteen thousand dollars. Madison Township voted twenty-five thousand dollars, but there was only seventeen thousand dollars of bonds issued.

Q. What was the amount of the subscription to the capital stock of this line of railroad by each township?

A. As I understand it, the amount of subscription to the capital stock of this line of railroad by each township was the amount that I have stated—fifteen thousand and seventeen thousand.

Q. Do you know whether or not that stock was ever issued to those townships?

A. No sir, I don't .

Q. Did the town of Madison vote any aid?

A. Not that I know of. There is no record of it that I saw in my records.

Q. That is probably included in the amount you named for Madison Township?

A. Yes sir.

Q. That town is located in Madison Township, is it?

A. Yes.

Mr. DOSTER: The defendant moves to strike out all testimony concerning bond issued and stock subscriptions, because irrelevant and immaterial.

(The Referee overruled the motion; to which ruling of *of* the Referee the defendant duly excepted.)

Q. Have those bonds been paid?

A. Not in full, no sir.

Q. Have they been partially paid?

A. Madison Township has been partially paid.

Q. About what proportion has been paid, if you can state?

A. I can't say definitely now. I forgot to look up that particular point.

Q. Would you judge that half of these bonds have been paid?

A. I rather think that about half of Madison's have been paid.

200 Q. How about the other—Shell Rock?

A. None of them have been paid.

Q. Nothing paid?

A. That is my recollection.

Q. Do you know the rate of interest those bonds bear?

A. They are bearing five per cent. interest at the present time.

Q. When will they be due?

A. I can't remember that now.

Q. Do you know what the interest was on the first issue?

A. Seven per cent.

Q. Do you know when they were refunded?

A. I think it was along in about 1902 or 1903, but I am not positive.

Mr. DOSTER: The defendant moves to strike out and exclude from the consideration of the referee all testimony concerning bonds of the townships named, because the same is irrelevant and immaterial.

(The Referee overruled the motion; to which ruling of the Referee the defendant duly excepted.)

Q. I will ask you now to give in detail the amount of grain raised annually in your county, the number of live stock on hand in March of this year, and the approximate value, if you can, of the various products of your county.

Mr. DOSTER: The defendant objects because irrelevant and immaterial, and not the best evidence.

The REFEREE: Unless this is separated or confined to the location in the vicinity of this line of road, I do not see that it cuts any figure in this case. Suppose it was away off in another part of the county, where the natural market was on some other road than this?

201 Mr. TAYLOR: I simply want the totals for the county, and then I shall boil the matter down to this line of road as compared with the rest of the county.

The REFEREE: With that understanding, the objection will be overruled.

(To which ruling of the Referee the defendant excepted.)

Mr. DOSTER: I will withdraw any objection to the secondary character of the evidence.

Q. You may proceed, Mr. Bonnett.

A. As nearly as I understood the subpœna, I prepared a tabulation, which I have here.

Q. Is that paper which you have in your hand made up from the records of your county as returned by the assessors?

A. Yes sir, as nearly as I could tell from 1905. It gives the number of acres for the year 1905. The number of acres is shown by the assessors' statistical roll, but the number of bushels is approximated, because our statistical rolls do not show the number of bushels.

Q. Is that tabulation made up by years?

A. I made it out for the years 1904 and 1905, as requested by the subpœna.

Q. Is it sufficiently explicit to explain itself?

A. I endeavored to make it so on the grains, but I did not make any tabulation of the cattle, because I had no means of knowing the number of cattle raised.

Q. I will ask you to explain that table to the Referee.

A. I have it filled with a tabulation of the amount of grain raised in Greenwood County as shown by the agricultural statistical reports of the various townships of said county and state for the years 1904 and 1905, then the headings as to the years, kind of crop,

202 number of acres, etc. The number of acres of winter wheat for the year 1904 were 1867. The subpœna also asked for the number of inhabitants and I show that also for the past three years.

Mr. TAYLOR: I offer this table in evidence.

Mr. DOSTER: The defendant objects to the table because irrelevant and immaterial.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

Said table was marked as "Exhibit No. 1," and is herewith transmitted as a part hereof.

Q. Did you make an investigation to ascertain about the number of cattle and live stock in the county?

A. I asked two or three parties and they could not give me any information.

Q. You have no record showing that?

A. The number of cattle raised?

Q. The number of cattle on hand March 1-st.

A. The only investigation I made of that was in the statistical rolls as turned in by the assessors with reference to the first day of March.

Q. Can you refer to that?

A. Yes, I have it here.

Q. I will ask you to state the number of cattle as appears from those rolls that were on hand March 1, 1906.

A. That is, for the county, you mean?

Q. Yes, for the county.

A. Total for the county: Milk cows, 10412; other cattle, 50,253.

Q. Now have you those figures for the year 1905, as of March 1st, 1905?

A. Yes sir.

203 Q. Please give those.

A. Milk cows, 10,708; other cattle, 47,010.

Q. Now for the year 1904?

A. First day of March, 1904, 9,939 cows; other cattle, 51,570.

Q. Now for the year 1903, if you have it.

A. I didn't bring that along.

Q. Have you read those figures from the records of your office?

A. Those figures are gotten from the abstract rolls of the various townships. This is an abstract of those rolls.

Q. And that you are required to keep?

A. As a record in my office, yes sir. The statistical rolls are not always kept as records of the office. For instance, in the year 1905 they were sent in to the Secretary of Agriculture.

Q. Have you any manufacturing industries along this line of railroad in your county and in the vicinity of Madison?

A. An ice plant is all that I know of.

Q. You have no manufactory that contributes any product to the railroad, that manufacures and ships any product out of the county over this line of road?

A. Not that I know of.

Q. Except the ice plant?

A. Except the ice plant.

Q. Now, Mr. Bonnett, about where is the terminus of this railroad located with reference to the center of the county?

A. Well, this railroad runs through Shell Rock and Madison townships, which are the two north townships of the county.

Q. Then there is really only four or five miles of territory in your county north of this railroad?

A. Approximately that much.

Q. Is there any parallel line of railroad near this one to the south in your county?

A. Yes sir.

204 Q. What road is that?

A. The Santa Fe.

Q. How far south is that from this line?

A. It runs north and south.

Q. This road in question runs east and west, and I am asking for the parallel line of road first south of that.

A. I misunderstood you. The first south of that is the Missouri Pacific, running through Toronto, about twenty-five miles south.

Q. There is a north and south line of which you just spoke; what is that?

A. That is the Santa Fe railroad.

Q. Does that run through Madison?

A. Yes sir.

Q. And that is a competing line?

A. Yes sir, a competing line with this road.

Q. Where does that road connect with the main line of the Santa Fe to the north?

A. At Emporia.

Q. Where does it connect south?

A. With the main line of the Southern Kansas?

Q. Yes.

A. It connects at Chanute.

Q. Is that the line that also extends to Moline on the Southern Kansas?

A. No sir. This is the Chanute and Benedict branch part, while the other is the Howard branch.

Q. Are there any other lines of road in competition with the Madison line west of the north and south line of the Santa Fe in your county?

A. Not that I know of, no sir.

Q. What is the distance from Madison to the west line of Greenwood county?

A. I don't know exactly.

Q. Well, approximately. If you can remember the number of townships wide east and west that your county is, you can tell approximately.

A. I presume it is about ten or twelve miles, perhaps, to the west line of Madison township.

205 Q. Then the terminus of this line is beyond the center of the county east and west?

A. No.

Q. The terminus is a little west of the center of the county?

A. Probably it may be a little, but not very much.

Q. Practically right in the center?

A. Yes sir.

Q. You think the county is four townships wide?
A. The townships vary in size, so you can hardly tell in that way.
Q. I meant congressional townships.
A. Yes, I think so.
Q. Are there any other industries located in or about Madison that contribute to the traffic of this railroad?
A. Not that I know of.
Q. You are well acquainted with the different townships of the county, are you not?
A. No, I couldn't say that I am well acquainted with them; I am only reasonably well acquainted with them.
Q. You have traveled over them some?
A. I have traveled over them some, yes.
Q. I will ask you to explain the relative importance of Shell Rock and Madison townships as compared with other townships in the county, from a business standpoint.
A. They are two of the best townships in the county.
Q. What is the character of these townships as to the lay of the land, the topography? Is it rough or level?
A. Well, it is medium, I think. It is just east of the Flint Hills—quite a little distance east, in fact.
Q. Is it a fine farming section?
A. The bottoms are good farming lands, and there is quite a good deal of upland farmed—that is, principally grazing.
205 Q. Is there much hay shipped from that section or from those two townships?
A. Well, I don't know as to that; I couldn't say as to that at all.
Q. Practically all of the cattle raised in the north half of your county are within shipping distance of Madison, are they not?
A. Well, they could be driven there, I suppose.
Q. What is the character of the country laying north of this line, say for fifteen or twenty miles?
A. It is rolling land of a good deal the same character.
Q. What is the nearest railway paralleling this to the north from Madison, if any?
A. There is none exactly paralleling it that I know of, unless it would be the main line of the Santa Fe at Emporia.
Q. What is the distance from Madison to Emporia?
A. I think it is about eighteen miles.
Q. About eighteen miles?
A. About that, I think.

The REFEREE: So far as these different points are concerned as to the lines of road and their general directions, couldn't you get that more accurately and save a good deal of time by introducing a map?
Mr. TAYLOR: I think so, yes.
Mr. FOSTER: The Board of Railroad Commissioners issue a map which, I suppose, is an official document. We will offer that when we get to it.

Q. What is the population of Shell Rock and Madison townships?
A. At the present time, I suppose you mean?
Q. At the last census.
A. I understand at March 1, 1906, Madison Township had, not

including the city, 1055; Madison City had 659; Shell Rock
207 township had 777.

Q. That is from the assessors' reports made on March 1, 1906?

A. Yes sir.

Mr. DOSTER: Defendant moves to strike from the record and exclude from the Referee's consideration all of the statistical evidence of the witness, and evidence as to the productivity and fertility and other characteristics of the different portions of Greenwood County, because irrelevant and immaterial.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

Cross-examination.

Questions by Dr. DOSTER:

Q. How much of a town is Madison?

A. About 659 is the population.

Q. That is the only town on the Madison branch line in your county, is it not?

A. No sir; there is Lamont.

Q. How large is Lamont?

A. Oh, I should judge about 150 or 175; maybe not that many; it is a very small place.

208 Redirect examination.

Questions by Mr. TAYLOR:

Q. Mr. Bonnett, I will ask you if you have the original election proclamation, calling the elections to vote bonds in Shell Rock and in Madison townships in your county for this railroad?

A. Yes sir.

Q. I will ask you to produce those originals.

A. Here they are (producing papers).

Q. Are these the originals?

A. Yes sir.

Q. Have you a certified copy of these?

A. I have prepared a certified copy of Madison township.

Mr. TAYLOR: I will offer these originals in evidence.

Mr. DOSTER: The defendant objects to the same because irrelevant and immaterial.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

Said original papers were marked respectively "Exhibit No. 2" and "Exhibit No. 3," and certified copies thereof are herewith transmitted as a part hereof.

Q. Is there any difference in the two contracts?

A. They are practically the same thing.

(Witness excused.)

209 W. M. SCOTT, a witness on behalf of the State, was duly sworn, and testified as follows.

Direct examination.

Questions by Mr. TAYLOR:

Q. Please state your full name?
A. W. M. Scott.
Q. What official position do you hold?
A. I am County Clerk of Coffey County, Kansas.
Q. Does the Madison line of railroad run through Coffey County?
A. Yes sir.
Q. What portion of the county does it traverse?
A. The southern part, clear across the county.
Q. How many miles of the railroad are in your county?
A. The way of the railroad runs, I should judge about thirty-eight to forty miles, the way it angles around.
Q. How far is this line from the south line of the county?
A. About four miles—four to five miles. It varies a little.
Q. Can you give the names of the townships through which it runs in your county?
A. Yes sir.
Q. And the amount of aid voted by each township?
A. Yes. It runs through Liberty Township, and Liberty Township voted fifteen thousand dollars. It runs through Neosho Township, which voted ten thousand dollars of bonds. It runs through Le Roy city, but they did not vote bonds for it. LeRoy Township voted twelve thousand, but only issued bonds to the amount of five thousand dollars; they didn't use it all. They were to have four thousand dollars a mile and were to issue bonds for just the amount of miles that they built. Spring Creek Township voted eight thousand dollars.

210 Q. What was the total for the county of the bond issue for this road?
A. Thirty-eight thousand dollars.

Mr. DOSTER: The defendant objects to the evidence concerning bond issue and moves to exclude it from the record and from the Referee's consideration, because it is irrelevant and immaterial.

(The Referee overruled the objection and motion; to which ruling of the Referee the defendant duly excepted.)

Q. Q. Have you a tabulation with you, prepared by yourself, from the records of your county?
A. Of the amount of bonds issued?
Q. Yes.
A. Yes sir.
Q. Have you also a table there showing the products of the county for certain years?
A. I have the number of acres. We have no way of showing the amount of products. I can only show the number of acres of the different products.

Q. I wish you would explain the character of the table that you have there and the points that it covers.

Mr. DOSTER: The defendant objects, because irrelevant and immaterial.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

A. Do you want the different products?

Q. Simply the points you have embraced in that table.

A. I took it from my statistical roll, which is a roll made up by the various assessors of the different townships, which is the
211 only way we have of getting at the facts as to how many acres there are of the different grains and things of that kind. We cannot give the approximate value in dollars and cents or bushels, because we haven't got it that way. Of corn we had in 1904 107,612 acres in the county; oats, 9,252 acres; flax, 8,539 acres; wheat, 6,683 acres, tame, wild grass, and hay, 52,372 tons. The part of the country this road goes through is mostly a hay producing country.

Q. Does that table also show the number of cattle for each township or for the county?

A. Yes sir, it gives cattle, horses, and all. In 1904 we had 45,258 head of cattle, and in 1905 we had 32,631; we had a decrease.

Mr. TAYLOR: I offer this table in evidence.

Mr. DOSTER: The defendant objects to the table because it is irrelevant and immaterial.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

Said table was marked as "Exhibit No. 4" and is transmitted herewith as a part hereof.

Q. You have no coal mines?

A. No sir.

Q. Have you any manufacturing industries along this line of road that contribute to the traffic of the road?

A. Gridley has a small plow-share manufactory, but I don't suppose the products amount to enough to make any material difference in the railroad shipments.

Q. How does the country along this Madison line of railroad compare with the balance of the country in your county?

212 A. Liberty Township is one of the largest and most productive townships there is in the county. Liberty and Rock Creek townships are the two largest. They have the largest population and largest acreage and things of that kind.

Q. Did you prepare a table showing the population?

A. Yes.

Q. That is not included in this statement "Exhibit No. 4," is it?

A. Yes, I have it at the bottom there.

Q. Could you give the population by townships?

A. I can't give it exact. I can give it very near. Liberty Township has 1164 or 1166; I am not just positive as to that. Neosho Township has eight hundred and something; I cannot remember the exact figures. Le Roy City has 756, and the township three hundred

and something. Spring Creek Township has six or seven hundred or something like that; it is a small township.

Q. Does that embrace the townships through which the railroad runs?

A. Yes sir.

Q. I will ask you to state what competing lines of road there are in that section of your country?

A. We have the Burlington branch of the Santa Fe, which touches the western part of the county at Gridley, in Liberty Township. Then we have the M. K. & T. coming out through the middle south to Parsons, which crosses west of Le Roy; and we have the main line of the Missouri Pacific through Le Roy.

Q. Is that an east and west line, the main line of the Missouri Pacific?

A. No, that is north and south from Kansas City. The Santa Fe runs north, too. It doesn't run parallel to this road.

Q. There is no parallel line to this road in your county?

A. No sir.

213 Mr. DOSTER: The defendant moves to strike out from the record and exclude from the consideration of the Referee all of the statistical evidence of the witness, and evidence as to the character of the country through which the road runs, because irrelevant and immaterial.

The REFEREE: The objection is overruled. I think the evidence is very remote, and I overrule this objection with the understanding that the evidence shall be connected more closely.

(To which ruling of the Referee the defendant duly excepted.)

Q. Have you a copy of the agreements made by these townships with the railroad company?

A. No, I didn't bring those with me.

Q. You say you haven't the original contracts with you?

A. No, I didn't bring them with me. I just made a synopsis of them.

Mr. TAYLOR: We will ask you to introduce certified copies of each one of those agreements.

A. It will take me about four days to make those.

Mr. TAYLOR: I think we ought to have those.

A. Le Roy Township issued four thousand, but the condition was that they were to pay four thousand dollars a mile.

Mr. DOSTER: I object to that statement; it is not the best evidence.

The REFEREE: The certified copies will be received.

(Said certified copies were marked respectively Nos. 5, 6, 7 and 8, and are herewith transmitted as a part hereof.

214 Questions by the REFEREE:

Q. How wide north and south are those townships to which you have referred?

A. Liberty Township is eight miles north and south—eight or nine; I am not positive as to that. I think Spring Creek is only six miles north and south. Le Roy Township is probably only six miles

north and south. Neosho Town Lip is the same width, I think, if I am not mistaken, as Liberty Township.

Q. Do you know where the people down there in these southern townships ship cattle or hay, or what their market is?

A. Kansas City, Missouri.

Q. Over what lines of road do they ship?

A. Over the Santa Fe. I have heard some of them say they would ship over this other road if they could get better railroad facilities. Most of them have to drive to Gridley and put them on the Santa Fe there.

Q. Does that give them a more direct route to Kansas City?

A. That gets them into Kansas City in the morning, yes sir.

Q. These roads run north and south?

A. The Burlington branch of the Santa Fe does, yes sir.

Q. And the Missouri Pacific line through Burlington runs which way?

A. Le Roy ships out on the Missouri Pacific.

Q. Both of those roads give a more direct route to Kansas City than does the Madison branch?

A. I think so. I don't know just the connection this branch does make. They may ship over the Missouri Pacific from Le Roy.

Mr. Dostek: The defendant moves to strike from the rec-
215 ord and exclude from the Referee's consideration all the testimony of this witness in response to the Referee's questions, because irrelevant and immaterial.

(The Referee overruled the objection and motion; to which ruling of the Referee the defendant duly excepted.)

Redirect Examination.

Questions by Mr. Taylor:

Q. Do you know anything about the management of this line of railroad in your county during the past two years? That is, as to whether it has been run in a first class way or not?

A. No, I couldn't say as to that. I am about fourteen miles from the line, and I don't get down on that line very much. All I can say is what people tell me, and that don't count here.

Q. Mr. Scott, you keep the records for the Board of County Commissioners?

A. Yes sir.

Q. And you have, of course, all the records that have been kept by the County Commissioners in your office since the organization of the county?

A. Yes sir.

Q. I wish you would prepare a certified copy of the record of the county commissioners showing the subscription to the capital stock made by each of the townships which voted bonds, and a certified copy of the journal entry, or whatever you call it, out of the
216 record of the county commissioners in that respect; that is, one for each township?

A. Yes sir, I will do so.

Mr. TAYLOR: I offer in evidence said certified copies which are to be made by this witness.

Mr. DOSTER: The defendant objects to the same because irrelevant and immaterial.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

Said certified copies are marked Nos. 9, 10, 11 and 12, and are transmitted herewith as a part hereof.

(Witness excused.)

217 W. H. BONNETT, heretofore duly sworn, was recalled as a witness on behalf of the State, and testified further as follows:

Direct Examination.

Questions by Mr. TAYLOR:

Q. I will ask you if you made certified copies of the record of the County Commissioners of your county showing the subscription to the capital stock of this line of railway by the townships of Shell Rock and Madison in your county?

A. Yes sir, I did.

Q. Are these papers the certified copies which you made out?

A. Yes sir, they are.

Mr. TAYLOR: I offer these certified copies in evidence.

Mr. DOSTER: The defendant objects to the same because they are irrelevant and immaterial.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

Said certified copies are marked Nos. 13 and 14, and are transmitted herewith as a part hereof.

(Witness excused.)

218 J. L. UHL, called as a witness on behalf of the State, was first duly sworn, and testified as follows:

Direct Examination.

Questions by Mr. TAYLOR:

Q. State your name?

A. J. L. Uhl.

Q. Where do you reside?

A. Madison, or near Madison; four and a half miles southwest of Madison City.

Q. What official position do you hold in that township?

A. Trustee of Madison Township at the present time.

Q. How long have you lived there?

A. Nearly twenty years.

Q. Have you been where you could observe the method of operation and management of the Madison line of railroad during that time?

A. Well, of course, I haven't had any great amount of business over the road of late years, but I have been over the road, some, more or less, along different times, and know something about it, I suppose.

Q. Do you know the method of operation and kind of management that has been given to other lines of road through that county?

A. I possibly might to a certain extent, yes.

Mr. DOSTER: The defendant objects because irrelevant and immaterial, and because the witness does not appear to be qualified.

Mr. TAYLOR: I desire to offer this for this purpose: If there is such a difference in the management of these lines of railroad that it is within the common knowledge of everybody that there is
219 something wrong with the management, it should be a matter to be received here in evidence.

The REFEREE: I think it is hardly competent, and will therefore sustain the objection.

(To which ruling of the Referee the plaintiff duly excepted.)

Q. I will ask you to state to the Referee in detail what you know about the operation and management of this particular line of road called the Madison line of the Missouri Pacific?

Mr. DOSTER: The defendant objects because irrelevant and immaterial, and because the witness is not shown to be qualified.

The REFEREE: He may state what he has observed.

(To which ruling of the Referee the defendant duly excepted.)

A. Do you mean at the present time compared with what I know for several years back?

Q. Yes sir, from 1900 to this time, 1906.

Mr. DOSTER: The defendant renews its objection that this is irrelevant and immaterial, and that the witness is not shown to be qualified.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

A. Well, along about 1900 we had what we considered pretty decent service from Madison to Le Roy with regard to the shipping of stock. This road got a good deal of stock trade, a good
220 deal of it, but from I don't know what time up to the present, they took the train off. They used to double the train back over to Le Roy and it was all right for stock business up there, but since that time it seems to me, from what I have observed about it, it has nearly dropped clear out of the stock deal. It don't get anything at all at Madison. The Santa Fe gets all the stock or the principal part of the stock deal. Oh, there might be a carload shipped out of there once in a while on this Madison line, but I don't know of a load for a year or two.

Q. Is there a large number of cattle shipped out of there?

A. Yes sir, Madison is a great stock point.

Q. Do you know the distance from this point over this Madison line to Kansas City?

A. I can't say that I know exactly, but from Madison it is in the

neighborhood of one hundred and twenty-five to one hundred and forty miles.

Q. What is the distance from the same shipping point over the Santa Fe to Kansas City?

A. Well, I think it says on the station sign-board, one hundred and forty-seven. I do not know that that is so—that is, one hundred and twenty-five miles over the Missouri Pacific, but that is my inclination. They all get to market about the same time over either road.

Q. They are all sent north to Emporia?

A. Over the Santa Fe?

Q. Yes.

A. Yes, they go to Emporia.

Q. And then take the main line of the Santa Fe?

A. Take what they call the "cut-off" down through Ottawa, over the Santa Fe.

Q. That makes it further by the Santa Fe than by this line?

A. I couldn't be positive on this point, but it is my judgment that it is. The Pacific and the Santa Fe usually land their
221 stock there about the same time in Kansas City; there isn't a great amount of difference.

Q. Is there any difference now?

A. I don't know of a load of stock being shipped out of Madison over the Pacific for quite a while.

Q. Is there any effort made by this line of road to get traffic there?

A. I don't think they do make any effort; I haven't heard of any. They did, I think, last summer say they would send a special over there for three or more cars, but when the neighbors got three cars ready, they wanted then five or six, and they couldn't get up that many cars at one time and they had to go by the Santa Fe.

Mr. DOSTER: The defendant moves to strike out and exclude from the consideration of the Referee the statement of what the witness heard, the same being hearsay.

The REFEREE: That will not be considered.

A. All I know about that is what I heard the stockmen talk among themselves.

Q. In what business are you engaged?

A. I am farming and stock raising.

Q. Do you do any shipping yourself?

A. Yes, I usually have about two loads a year. I am not a regular stock man; just a farmer.

Q. What line of road have you been patronizing?

A. I go over the Santa Fe because I can get it quicker and easier.

Q. You get the service?

A. Yes sir.

222 Q. Could you get the same service over this line of road?

A. I don't think so now. I used to think so years ago, but I have pretty near quit it.

Q. What time does that mixed train leave Madison for the east in the morning?

A. I don't believe I know. We load our stock in the evening

to go north and get out of Emporia along sometime about ten o'clock.

Q. Do you know anything about the mixed train service there and what effect it has had upon the passenger traffic at Madison over this line?

A. Yes, I think I do.

Q. State what you know about it.

A. It is not very good. The service we get now is very poor.

Q. You are stating a conclusion. What do you know about the patronage, if anything? Do people patronize the mixed train?

A. I suppose where they have to go this way and can't go any other way, they go like we did yesterday.

Q. Do you know the schedule time for the running of that train from Madison eastward?

A. No, I don't know the schedule time.

Q. You don't know the schedule time?

A. No sir.

Q. How many trains a day do you have over this line?

A. All I know of is one over and one back. We come over yesterday on the freight with one coach attached, and unloaded coal and so on.

Q. Do you know in what condition the roadbed is, from personal observation?

Mr. DOSTER: The defendant objects to the question as irrelevant and immaterial, and because the witness has not shown himself qualified.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

223 A. I noticed the roadbed yesterday; I rode in the hind end of the coach going west. Some places it looked in very fair shape, and some places it was rough and just looked like branch roads that don't have a great amount of traffic. They are not kept up like as if they had more traffic—low points and weedy places and not ballasted all the way.

Q. Could you tell from the observations you made whether or not section men are employed upon the line?

A. I saw one gang of section men yesterday.

Q. In how many miles?

A. I didn't notice but one gang from Madison over except the home gang where we started. I might not have seen all of them; I wasn't out all the time. I saw one gang.

Q. How many men were in that gang?

A. I think three or four, that I saw.

Q. Mr. Uhl, you have made some study of cattle pasturage and cattle feeding in and for Madison Township, have you not?

A. Yes, that is my business, partly; I am pretty well acquainted there.

Q. I will ask you if, from your own knowledge, you can give an estimate of about the number of cattle pastured and fed there and afterwards shipped out to the markets each year?

A. You mean that dodges taxation—that come in after taxation?

Q. I don't care whether they come in before or when.

A. I couldn't give that from the simple fact that my returns have been made of taxable cattle, and I don't remember that, but I might make a conservative estimate of the number of cattle shipped in there after taxation, after the first of March, that dodge taxation, that are fatted or shipped to feed lots during the season after
224 the first of March and pastured there during the summer and then go to market fat or to the feed lots from that township.

Q. Give an estimate?

A. A conservative estimate would be anyway five or six thousand or probably more, but I don't want to get it too big for fear I might get it wrong. I am satisfied five thousand would be low.

Q. That is for your township?

A. Yes sir, Madison Township. The western half of Madison Township is all fine grazing and pastures.

Q. They ship them to eastern markets in the fall?

A. Yes sir.

Cross-examination.

Questions by Mr. DOSTER:

Q. You spoke of cattle that came in.

A. Yes sir.

Q. They are pastured there in that county?

A. Yes sir.

Q. And then shipped out in the fall?

A. Yes sir.

Q. Those cattle that come in, come from south and north, do they not?

A. Yes, they come in from various ways.

Q. There are not very many of them come in from the east over the Madison branch line?

A. Well, a good many people go to market and buy their cattle and ship them in. There are a good many cattle shipped in and bought in that way. Some buy on the markets and ship in from the east, and some buy more on the ranches and ship direct from western pastures.

Q. Coming in from the north and south, they come over
225 the Santa Fe?

A. Yes, they would. From the east everything could come over the Pacific and used to come over the Pacific. I know two of the largest stockmen we have up there used to patronize the Pacific altogether that don't now.

(Witness excused.)

M. J. KEETON: called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. TAYLOR:

Q. State your name?
A. M. J. Keeton.
Q. What official position do you hold?
A. County Clerk of Anderson County?
Q. How long have you been a resident of that county?
A. Twenty-three years.
Q. Are you acquainted with the Madison line of railroad running through your county?
A. Yes sir.
Q. About how many miles of that railroad have you in your county?
A. About twenty-four miles, I think—twenty-four or -five.
226 Q. What part of the county does that road traverse?
A. Through the southern part of the county. It crosses the county, I think, about from two and a half to three miles from the south line, almost parallel with the south line of the county.
Q. Did any of those townships vote aid to this line of road?
A. Yes sir, two of them.
Q. Did you make up a tabulation from your record, showing the amount of aid voted by each township?
A. Yes sir.
Q. Have you that tabulation with you?
A. Yes sir.
Q. Does that table also set forth the products of the county?
A. Yes, I have endeavored to give some of the products of the county.
Q. Explain the table without reading any figures; explain what it contains.
A. It contains the amount of grain that is estimated to be raised in the county for each year for 1904 and 1905. The way I get that is from the assessors' return of acreage; I haven't any way of knowing by our records just the amount raised, but they give us the acreage and we estimate about what the yield would be over the county, and from that I made my table.
Q. Have you in that table a record of these townships which this road traverses?
A. I merely hurriedly got part of it. I have only for those four townships that this road crosses, the amount of stock fattened and sold for slaughter for the years 1905 and 1904.
Q. Is that typewritten?
A. I wrote that latter part in pencil yesterday just as I was getting ready to start. I had it for the whole county, and then I added this, thinking you might need it, for those four townships.

227 Mr. TAYLOR: I offer this table in evidence, including the pencil addition just referred to.

Mr. DOSTER: The defendant objects separately as to the matter of bonds voted and as to the statistics of grain and other products raised, because each such item of evidence is irrelevant and immaterial.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

Said tabulation is marked "Exhibit No. 15," and is transmitted herewith as a part hereof.

Q. Have you with you the original agreements or contracts made by the railroad company with the municipalities voting aid?

A. No sir, I haven't the agreements with me.

Q. You have those on file in your office, have you?

A. Yes.

Q. Will you make certified copies of those agreements for each township and send them to the Referee?

A. Yes, I can. I have the propositions that were submitted with the agreement as it was recorded in the county commissioners' records.

Q. We would also like the journal entry showing the subscription to the capital stock for each township, which will be found in the county commissioners' records of your county.

A. Yes sir.

Mr. TAYLOR: I now offer these certified copies of the contracts and of the journal entries showing the subscriptions to stock, just asked for.

Mr. DOSTER: The defendant objects to each of said documents because irrelevant and immaterial.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

228 Said documents are marked respectively Nos. 16, 17, 18, 19, 20, 21, 22, and 23, and are transmitted herewith as a part hereof.

Q. You have some coal and a good deal of oil and gas in your county, haven't you?

A. We haven't any coal that is developed to speak of. There is gas in our county.

Q. Have you any manufacturing industries along this line of railway that contribute to its traffic?

A. No sir, not along that line, I think.

Q. Does the table which I have just introduced in evidence show the population of each township?

A. Yes sir, it shows the population of the county and of each of these four townships.

(Witness excused.)

J. M. WORTMAN, called as a witness on behalf of the State, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. TAYLOR:

Q. State your name, please.
A. J. M. Wortman.
Q. What official position do you hold in this county?
A. County Clerk of Linn County, Kansas.
229 Q. How long have you been a resident of the county?
A. Thirty-nine years.
Q. Have you made up a tabulation similar to these tabulations that have been introduced in evidence by the other county clerks?
A. Yes sir.
Q. How many miles of the Madison line of railway are there in this county?
A. About twenty-seven and one-half miles.
Q. Through how many townships does it pass?
A. It runs through four townships.
Q. Did each of these townships vote aid to the railroad?
A. Three of them did.
Q. Did they subscribe to the capital stock?
A. Three of them did, yes sir.
Q. Have you a tabulation showing the amount which each of these three townships subscribed and voted?
A. Yes sir.
Q. Does that tabulation which you hold in your hand also show the products of this county?
A. Yes sir.
Q. Including live stock?
A. I made up a tabulation of live stock killed or sold for slaughter during the year.
Q. Is that table made up from the records in your office?
A. Yes sir.
Q. From the assessors' returns to you?
A. Yes sir.
Q. Does that table also show the population of this county?
A. Yes sir.

Mr. TAYLOR: I offer this tabulation in evidence.

Mr. DOSTER: The defendant objects separately as to the
230 matter of bond issues and stock subscriptions, and as to the products of live stock, because each of said items is irrelevant and immaterial.

(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)

Said tabulation is marked "Exhibit No. 24," and is transmitted herewith as a part hereof.

Q. Have you any coal mines in this county?
A. Yes sir.
Q. Where are they located?

A. They are located over in the eastern part of the county.
Q. Are they near this line of road?
A. Yes sir, right along the line.
Q. Do you know about how many tons they contribute to the traffic of this line of railway annually?
A. No, I couldn't give that.
Q. Are they in constant operation?
A. Yes sir.
Q. Is it a good quality of coal?
A. Yes sir.
Q. Do you know whether or not the railroad burns that coal? Do they use it on their engines?
A. I couldn't say as to that.
Q. Have you oil and gas in this county also?
A. We have gas developed here, and some oil.
Q. Have any manufacturing industries been located in this county?
A. Some, yes.
Q. Do they contribute anything to the traffic of this railroad?
A. Yes sir.
Q. What are those industries?
A. At Pleasanton we have a factory, a handle factory, located on the Missouri Pacific.
Q. They make axe-handles and things of that kind?
A. Yes.
231 Q. Do they ship that stuff out by the carload?
A. I don't know; I couldn't say as to that.
Q. You don't know how much tonnage they furnish for shipment?
A. No, I couldn't say as to that.
Q. Or how much they receive of raw material?
A. No, I couldn't say as to that.
Q. Have you any other manufactories along the line of this road contributing to its traffic?
A. There is another factory at Pleasanton called an awl factory, that turns out quite a good deal of stuff—a patent sewing awl.
Q. Is there anything else?
A. I can't call anything else to mind now. They make flour over at that Pleasanton Milling Company's mill.
Q. Do you know what the capacity of that mill is?
A. I think they figure about a hundred and fifty or two hundred barrels a day.
Q. Have you any other line of road running to this county seat than this Madison line?
A. No sir.
Q. What is the nearest other line to Mound City?
A. The Frisco.
Q. East of here?
A. Yes sir.
Q. How many miles away is that?
A. It is a little over seven miles.
Q. Have you any nearer line of railroad to the south?
A. No, we haven't anything.

Q. And nothing north of you within a reasonable distance?
A. No sir.
Q. All of this country through here is compelled to patronize this line of road?
A. Yes sir.
232 Q. How many trains a day do you have into this city?
A. Well, we have one out and one in. There is one runs west and one runs east.
Q. That is a mixed train?
A. Yes sir.
Q. Have you had occasion to patronize it is a passenger?
A. Well, yes. I live at Pleasanton when I am at home, and would patronize a passenger if they had one.
Q. Do you know what the schedule is for this train east and west?
A. No, not exactly.
Q. Do you know what time it is due to arrive in Pleasanton from the east in the morning?
A. About ten-something—no, it is nine-something, or maybe ten. I am not right sure about it.
Q. Is there any certainty about the arrival of that train?
A. No.
Q. Do you know what time the train from the west is due here?
A. About 2:45, I think.
Q. Is there any certainty about the arrival of that train here at schedule time?
A. No. It is usually a little better on time going east than it is going west.
Q. Do you know the reason why these trains do not run, as a usual thing, upon schedule time?
A. I don't know as I can answer that.
Q. Have you the original propositions submitted to the people by this railroad company for aid—the original agreement?
A. Yes, we have that in the commissioners' journal in the clerk's office.
Q. I will ask you to prepare certified copies of each of those propositions for each township which voted aid and subscribed to the capital stock of this railroad, and then I would like also
233 certified copies of the record of your board of county commissioners showing the subscription to the capital stock of this line of railroad by each township.
A. Very well.

Mr. TAYLOR: I now offer these copies in evidence.
Mr. DOSTER: The defendant objects to each separately because irrelevant and immaterial.
(The Referee overruled the objection; to which ruling of the Referee the defendant duly excepted.)
Said tabulations are herewith transmitted as a part hereof, marked respectively Nos. 25, 26, 27, 28, 29 and 30.
(Witness excused.)

The hearing was thereupon adjourned to St. Louis, Missouri, until Wednesday, August 8, 1906.

234 *Plaintiffs' Testimony*

STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for Board of Railroad Commissioners, and C. C. COLEMAN, Attorney-General of Kansas, Plaintiffs,

vs.

THE MISSOURI PACIFIC RAILWAY CO., Defendant.

	D.E. C.E.
E. M. Curtis	1–
Fred P. Johnson	7–
E. M. Curtis (recalled)	18–24
A. R. Duncan	26–
J. P. Burnett	26–
John Nugent	29–30
Fred P. Johnson (recalled)	31–33
C. J. McPherson	35–47
A. R. Duncan (recalled)	49–
W. H. Malcolm	51–
Defendant's Testimony	56–
John M. St. Clair	56–57
M. L. Byers	67–68

235 In the Supreme Court of the State of Kansas.

STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for Board of Railroad Commissioners and C. C. COLEMAN, Attorney-General of Kansas, Plaintiffs,

vs.

THE MISSOURI PACIFIC RAILWAY CO., Defendant.

Testimony taken in the Legal Department of the Missouri Pacific Railway Co. in the Missouri Pacific Railway Building, corner of Seventh and Market Streets, in the City of St. Louis, State of Missouri, on the 8th day of August, 1906, before T. F. Garver, Referee, appointed by the Supreme Court of the State of Kansas to take testimony in the above entitled cause.

Present: Carr W. Taylor, Esq., counsel for plaintiffs, and Frank Doster, Esq., counsel for defendant.

Testimony on Behalf of Plaintiffs.

E. M. CURTIS, recalled for plaintiffs, testifies as follows:

Direct examination by Mr. TAYLOR:

Q. What position do you hold with the Missouri Pacific Railway Co.?

A. Assistant general auditor.

Q. Where is the auditor of the Missouri Pacific Railway System?

236 A. I presume he is on the ocean at this time. We got word he had sailed on the 4th.

Q. He is away on vacation?

A. Yes sir.

Q. Have you charge of the general office of the Missouri Pacific Railway System, that is the auditing department, in his absence?

A. In his absence I have charge.

Q. I will ask you to explain what accounts are kept by the auditing department, that is, are all of the accounts with reference to the earnings of the company as well as to the operating expenses of the company kept in your office?

A. We keep a record of all the earnings and of all the operating expenses of the company.

Q. Are the records with reference to wheel reports and the records of conductors kept in your office?

A. The record of the movement of cars is not kept in our office. We have a car accountant and he keeps the records of the movements of all cars, all equipment. The wheel reports are made to him.

Q. Now, he has an office here in this building, has he?

A. Yes sir.

Q. What is his name?

A. A. R. Duncan.

Q. I will ask you if you have prepared a statement showing specifically the expense of maintaining what is known as the Madison line of railway?

A. I have not.

Q. Have you prepared since the last examination any statement with reference to the Madison line, that is the expenses of operating the Madison line of railroad?

A. I think Mr. Johnson was testifying as to expenses.

Q. You prepared some tables for me?

A. They were prepared in the office, yes sir.

Q. Have you had some tables prepared specially?

A. Some of them.

237 Q. Have you the tables with you?

A. I have two.

Q. What are those two?

A. One of them is the statement of amounts charged to the line from Monteith Junction to Madison on account of repairs and renewals of buildings, January 1st, 1903, to June 30th, 1905; the other is a statement of cost of steel rails and cross ties from Monteith Junction to Madison, January 1st, 1903, to June 30th, 1905.

Q. Are you competent to testify as to the correctness of the tables?

A. I did not draw the figures off personally, Mr. Johnson prepared them.

Q. I will ask you if you prepared an abstract showing the repairs upon depots and stock yards &c., for the respective stations upon the Madison line?

A. Not for each station, no sir.

Q. Well, did you prepare an abstract showing the actual amount

of money expended in repairs and new buildings at the respective stations along the line?

A. The statement is a statement in total of all repairs to buildings along that line.

Q. Who prepared that statement?

A. That was prepared by Mr. Johnson.

Q. Did Mr. Johnson also prepare a statement showing the number of section men employed?

A. He did not, no sir, he did not get that far. Some of the information you ask for we have not in the office, we would have to go to Osawatomie for it in order to get it in such detail as you wished.

Q. What part of that information was it that you did not have in the office?

A. That would be of the engineers and firemen particularly. The other train men you would have to go to Sedalia for part of it.

Q. Then you do not keep a roll of the employees?

A. We have the pay-roll of the employees, but the individual might run over a number of different divisions. They are
238 not all employed exclusively on this line, you see.

Q. For illustration you have two train crews, as I understand it, on the Madison line?

A. Yes sir.

Q. Have had for the past eleven or twelve months. Are not they permanent employees for that run?

A. They may be permanent employees but they would not necessarily be on that run exclusively.

Q. They are subject to be ordered out on some other run?

A. They might be ordered out on some other run out of that territory.

Q. And in that case some other employé would be ordered to take the place of that absent train man?

A. He would, yes sir.

Q. Would it not be possible to make up an account from your rolls showing the number of men employed on the Madison line, irrespective of who they are, and showing the amount of salary paid for train service, train men?

A. Such a statement could not be made from the pay rolls. The pay rolls would only give the total number of hours' work, or the total number of miles run, or the number of days, but would not show the district over which he ran.

Q. Where did you say the book is kept that shows this thing?

A. For the engineers and firemen we would have to go to the master mechanic's office at Osawatomie.

Q. What is his name?

A. Well, we have had several there during the period of two and a half years. Mr. Braun was there at one time, probably in the early period here of 1904. I do not recall just who is there now.

Q. You do not know who is in charge there now?

A. No sir.

Q. He keeps an accurate report as to the number of men used in the operation of the Madison line?

A. Yes sir.

Q. And knows the amount of money paid to each?

239 A. Yes sir, he prepares the pay roll.

Q. Would he have the records there for the years 1903, '4, '5 and up to this time of 1906?

A. I presume he would.

Q. Your office keeps a record of the amount expended for section men, does it not, on that line?

A. I think we could prepare that from the pay-rolls.

Q. You spoke about having to go somewhere else, Osawatomie or Sedalia, for some information?

A. That is for the conductors and brakemen, train men other than engineers and firemen.

Q. Sedalia, Missouri?

A. Sedalia, Missouri.

Q. You have no record in the office showing the number of men employed on the Madison line and the amount expended for their services?

A. We have not anything of the kind here.

Q. Then there is no accurate account at this office of the actual expenditures for each of the twelve lines constituting the Kansas & Colorado Pacific?

A. Oh, yes, there is, but we cannot identify the individuals.

Q. I do not want to identify the individuals, I want to get the exact cost.

A. We have the exact cost of operating that line.

Q. That is what I want. I do not care who the individuals are, but I want to know exactly what was paid out for section men during the years of 1904 and '5 and up to June 30th, 1906, if we can get it down that close?

A. We can give the expenses of that line as it is ordered to be subdivided by the Interstate Commerce Commission.

Q. I do not want it that way, I want the information. I want to know exactly how much material has gone to the Madison line for the purpose of repairing tracks, for the purpose of repairing depots, and if any new depots have been built the cost of the material and the construction. I want to know in dollars and cents how

240 much stuff has been actually used in repairing and maintaining the Madison line alone.

Mr. DOSTER: You have got on to another topic, you were talking of section men a few minutes ago.

Mr. TAYLOR: I know, but I have gone over the whole thing with him. This last question was suggested by his saying that he could do it proportionately.

The WITNESS: I don't believe that we have a record separating the cost of material and the cost of labor in every instance. As we show you here we can show you the ties and rails, we can probably show you some other materials that were used, but whether it would be all of the materials separate from the labor I cannot say just now.

Q. Who keeps the accounts of the operating expenses for the Madison line?

A. We keep it in the auditor's office.
Q. What man?
A. Well, Mr. Johnson, as much as any one else.

241 FRED P. JOHNSON, recalled for the plaintiffs, testifies as follows:

Direct examination by Mr. TAYLOR:

Q. What position do you hold with the Missouri Pacific Railway Company?
A. I am clerk in charge of the operating division statements in the auditor's office.
Q. What is included in those statements of yours in the way of accounts?
A. We show the expenses of operating the railroads by the various superintendents' territory and the subdivision of each superintendents' territory, and the cost of running trains and of carrying freight and passengers.
Q. Is what is known as the Madison Line of the Kansas, Colorado & Pacific Railway Co. a subdivision?
A. It was a subdivision up to the 1st of July, 1905.
Q. What has it been since then?
A. Since then it is simply a part of the Joplin division.
Q. And since July, 1905, all of the accounts that you have kept in your office relative to the Madison line have been merely kept upon a proportional basis?
A. Well, since we have been charging the Madison line with a certain proportion of the entire Joplin division expenses, that is, subsequent to July 1905.
Q. Prior to that time you kept an expense account which would show the cost of operation of the Madison line?
A. Yes sir.
Q. I will ask you whether or not any money was expended on the Madison line at stations on said line in the State of Kansas for new depots during the years 1903, '4, '5 and up to this time in 1906?
A. In compiling all of our statistics we have stopped with June, 1905, in the statements because of the theory you want this accurate and we could give you actual figures.
Q. You say no money was expended?
242 A. Up to June, 1905, for new depots.
Q. Is there any way for you to determine whether money has been expended since then for new buildings?
A. Yes sir, we could get that very readily.
Q. Do you know whether there has been or not?
A. I do not believe there has.
Q. I will ask you whether or not any money was expended on the Madison Line within the State of Kansas for new steel or rails of any character, during the years 1903, '4, and '5?
A. Yes sir.
Q. Have you prepared an account showing the amount expended upon that line for such new steel or iron?

A. Yes sir.

Q. I will ask you to refer to it.

The Witness produces the paper referred to.

Q. The statement you hand me entitled "Statement of Cost of Steel Rails and Cross ties on lines from Monteith Junction to Madison, January 1st, 1903, to June 30th, 1905," was compiled by you, was it?

A. It was compiled by me from our records, yes sir.

Q. Now, in keeping those records do these charges against the line for steel rails and for cross ties embrace an actual outlay for that line alone?

A. Yes sir, they are compiled from statements rendered to us by the superintendent showing the actual amount of steel and cross ties laid on each one of the subdivisions.

Q. This statement includes for the year 1904 a total expenditure for cross ties of $28,952.20; I will ask you if the ties were entirely renewed on said line?

A. I should judge from the figures that they were.

Q. That would indicate to you that new ties were put in all along that line?

A. From those figures.

Q. I notice also for the year 1905, that is for the first six months of that year, that $10,238.21 was also expended for new cross
243 ties?

A. Yes sir.

Q. That would indicate that the putting in of new ties was continued from the year 1904?

A. Yes sir.

Q. Do you know what cross ties for a mile of road cost during that time?

A. No, I could not say what it cost per mile.

Q. How many ties do they use to the mile?

A. That is the reason I cannot tell, I do not know how many ties they use to a mile.

Q. Is there anybody in the building that knows?

A. Yes sir, I suppose our maintenance of way people can tell.

Q. Who is the chief man in the maintenance of way?

A. Mr. M. L. Byers.

Q. The statement which you have just referred to, so far as you know, is a correct statement showing the cost of cross ties charged up to the Madison Branch?

A. So far as I know, yes sir.

Q. Does the record show that that charge was a proportional or specific charge for that line?

A. A specific charge for that line.

Plaintiff's counsel offers in evidence the statement referred to and the same is marked Exhibit A.

Q. The statement Exhibit A, includes the total cost from Monteith Junction to Madison; what is the mileage from Monteith Junction to the Kansas line, do you know?

A. It is about sixteen miles.

Q. And, of course, this statement includes the cost of cross ties and of steel rails for that sixteen miles?

A. For the Missouri end, yes sir.

Q. It being impossible for you to aggregate that cost from the other by reference to your records?

A. Yes sir.

Q. Now, have you any way of ascertaining the cost of the labor expended in the repairing of the Madison line during the years 1903, '4, '5 and '6?

A. In some of our accounts we would be unable to separate the labor from material. I could not make a statement and say
244 it was a statement of labor exclusively.

Q. I will ask you then if the cost of the steel rails and cross ties mentioned in Exhibit A. includes also the labor expended?

A. No sir, it does not.

Q. Can you give me the labor expense for repairs?

A. No, we could not separate the labor of laying cross ties from the labor of laying steel rails and other labor. It is charged to track labor repairing account.

Q. Do you keep the track labor account for the Madison branch?

A. Yes sir.

Q. You can give us that information accurately?

A. In that account we can.

Q. Can you give us that statement?

A. No sir.

Q. How long will it take you to give it to us right now?

A. The account for repairs of roadway, the labor charge?

Q. Yes?

A. We could probably get it in about two hours.

Q. I will ask you to furnish that account. Now, I will ask you if any money was expended on the Madison line during the years 1903, '4 and '5 for bridges?

A. Well, I could not say off hand, but I believe there was.

Q. Will you ascertain the amount that was expended in making repairs?

A. Yes sir.

Q. Both for material and the labor charge?

A. That would be combined. Our records will not enable us to separate it.

Q. That is all right so that we get the accurate cost. Now, are there any other repairs a record of which is kept by your company, than those I have examined you with reference to?

A. We have an account that we call repairs of telegraph, repairs to telegraph lines on that line; we have an account that we call repairs of water service.

245 Q. Have you made any repairs on that line for telegraph and water service?

A. I believe there is a considerable charge for repairs of telegraph and a small charge for water service.

Q. Can you give those amounts specifically from your books?

A. Yes sir.

Q. Can you do so now?

A. I will try to get all of that by night.

Q. I presume that the information that I have been calling for will be prepared in a tabulated form?

A. By months?

Q. Yes, so it can be introduced in evidence as an exhibit?

A. I can give you that in a rough copy today and have the carbons made up later.

Q. That will do all right. Have you prepared the statement showing the number of section men employed on the Madison line in the state of Kansas?

A. No sir.

Q. For the years 1903, '4 and '5?

A. No sir.

Q. Can you prepare such statement from the records in St. Louis?

A. It can be done, I believe. An examination would have to be made of every pay roll in this division.

Q. Where can that information be more conveniently obtained?

A. Nowhere.

Q. About how long will it take you to get that information for us?

A. I should say it would take two men a month to make a careful examination of those pay-rolls for those matters.

Q. Who has charge of the section men on a line like the Madison line?

A. The roadmaster would be the direct official in charge.

Q. Does not the roadmaster keep a book showing the number of men employed on a section?

A. He keeps a time book.

Q. Where is the time book?

A. I could not say.

Q. It is not forwarded to St. Louis?

A. No sir.

Q. It is kept in an office somewhere?

246 A. It is kept in the superintendent's office, but the trouble with this particular line is that for part of the time it was under the jurisdiction of one superintendent and the balance of the time under another superintendent.

Q. Would that make any difference in the records?

A. The original superintendent ought to have his records, it is not so in every case, but we find they have been delivered to the succeeding superintendent, and they must be located.

Q. Has there been no uniformity of keeping records in one place?

A. I cannot say as to that, they are under the jurisdiction of the operating department and they are filed in the most convenient place. These time books after the pay-rolls are made up are seldom referred to.

Q. They are not destroyed?

A. Not that I know of.

Q. Who did you say kept those books?

A. The roadmaster is the official who has charge of the section labor, after the books have served his purpose they become the property and part of the files of the superintendent's office.

Q. Where was the superintendent's office for the years 1903, '4, '5 and '6?

A. For 1903 and the first four months of 1904 the superintendent's office was at Sedalia, Missouri, and for the balance of the time it was at Nevada, Missouri.

Q. The roadmaster for the Madison line did not keep the books in his office?

A. I should not think he would after his payrolls were made up.

Q. But you do not know certain?

A. I do not know positively.

Q. The roadmaster's office has always been at the same place?

A. I cannot say as to that.

Q. That would be at Butler, Missouri?

A. That is the headquarters for the roadmaster at the present time and I believe it has always been there.

247 Q. And if he kept the record that record could be found there?

A. Yes sir, if he has the record.

Q. There is no way then for you to approximate the cost of section men for that line of road, the Madison line, during the years mentioned?

A. The greater portion of their salary would be in the statement you have asked for, the repairs of roadway. The section labor is engaged in that class of service and his salary is charged to the class of work he is engaged on.

Q. But you are not prepared to say that the wages paid to the section men, that all those wages would be included in that account?

A. No, some of it may be for repairs of telegraph lines, some small repairs.

Q. But you do not know that it would include all wages of the section men actually employed on the Madison line?

A. No, I could not say.

Q. How many stations have you on the Madison line in the State of Kansas?

A. I cannot say, I can tell you how many we have on the entire line.

Q. Do you kep*t* an account showing the number of agents and the salaries paid to them?

A. Yes sir, we have their payrolls, we do not keep any separate account.

Q. Have you made up any statement of that?

A. The statement has been made up and is now being typewritten by our stenographer.

Q. Was it made up under your direction?

A. Yes sir.

Q. And does that statement include all the employees in and about depots and yards?

A. No sir, it is simply the number of station agents and their salaries. That is what the letter called for.

Q. Is there any station along that line that employs more than one man?

A. The only station that would have a man there, an extra man

working for a day or two, would be at Butler, Missouri. They have an office force there, and there may be times at some season
248 of the year when they would have station labor.

Q. But there would be no station in the State of Kansas where two men would be employed at one station?

A. Not that I know of now.

Q. I asked Mr. Curtis some question relative to the number of train men employed upon the Madison branch; have you any record showing the number employed for the years 1903, '4 and '5, and the wages paid them?

A. Nothing but the pay rolls in this office.

Q. Are you able from the pay-rolls to make up a statement showing the actual cost of operating trains upon the Madison line for the years named?

A. In making up these statements we did not get that far, but I am satisfied that the pay rolls will not show the work of the engineers and firemen. It shows the man, his headquarters and the time that he puts in.

Q. You say it does not show the place where he works?

A. The payroll will not show that. The expense is divided for us by the mechanical department.

Q. You have no separate account at the St. Louis office showing the cost of train men for the Madison line?

A. Yes sir, we have.

Q. That is what I want?

A. What I mean is that the allotment or distribution of the wages of enginemen is made by the mechanical department and they give us a monthly statement showing so much money on the Madison Branch for engineers and firemen. We are in no position to check that against the pay-roll, but the account is just as accurate, or ought to be, as if we compiled it here.

Q. You then have an account which is not proportional in its character, showing the cost of the train employees for the Madison line?

A. Yes sir.

Q. Did you prepare a statement showing that?

A. No sir, I did not.

Q. Can you prepare a statement for us so we can have it to-day?

249 A. I will try. It is just a question of taking it off our record. Of course the more statements I make up the longer it will take. I will try to have it to-day.

Q. What is the name of the man who keeps your wheel report?

A. Mr. A. R. Duncan, car accountant.

Q. I believe you stated in your examination in chief for the Missouri Pacific Railway Co., that the Kansas & Colorado Pacific Railway Co. is a separate corporation and you keep the expense of that corporation separate from the expense of other lines?

A. We do, we keep the expense separate from other lines in this office, not in my department.

Q. I will ask you whether you keep an estimate of cost of running trains per mile on the Madison line?

A. The cost per train mile?

Q. Yes?

A. We did until July, 1905.

Q. Was that a specific charge based upon the actual expense of running trains on the Madison line, or was it a proportional charge?

A. Well, it is the cost of operating all trains on that division per train mile.

Q. In making that statement up you included a great many proportional charges, did you, such as the salary of general officers &c.?

A. It is the entire Madison line's proportion of all expenses.

Q. I want to know, of course, the actual cost of running a train on the Madison line and I want that cost to be exclusive of any proportional charge, such as the salaries of general officers, &c., I want a specific estimate?

A. A statement of that kind would require an indefinite length of time to compile because we take all of our expenses just as they come to us, and where the Madison Branch is entitled to a proportion of the system's expenses it is given to it. Now, then, we have
250 *have* some 5,000 vouchers a month, and every one of those vouchers that carry any charge to the Madison line would have to be examined to see whether it was a local charge or whether it was a proportion of any system's expense; of course, we can give you that information.

Q. Well, Mr. Johnson, you have been running upon the Madison line during the past eleven months two trains a day, as I understand it, one from Madison east to Butler, Missouri, and one from Butler Missouri, west to Madison; isn't it possible for you to estimate the cost of running those two trains each day without reference to the repairs upon the tracks or to a proportional charge for general officers, &c.?

A. Well, what do you consider the cost of running a train?

Q. I want the net cost of running a train without reference to repairs on the track or anything else?

A. In other words, you want the train expense?

Q. I want the train expense, yes?

A. Now, then, do you want the supplies furnished that train, such as fuel?

Q. Yes sir, I want to include that, coal, oil or whatever enters into it, you know, I want that specific charge?

A. Without any repairs, equipment or repairs to the track?

Q. Yes; can you give it now or will it require an investigation?

A. You have asked for part of it, you have asked for train men, all I will have to add to that is fuel.

The REFEREE: What you want is the expense of running a single train from Butler to Madison, isn't it?

Mr. TAYLOR: Yes.

The WITNESS: I can give you the total expense for train service by months.

Q. That does not include these other charges?

A. That will simply be the wages of the train crew, and
251 the supplies necessary to run the engine and the train?

Q. Yes, I would like that kind of table if you can prepare it?

A. Very well.

Q. How long will it take you to prepare that table?

A. I will try and have it to-day.

Q. Does the Missouri Pacific System make up a table showing the average cost of running a train one mile upon its system?

A. Yes, we do, of course it is an approximate statement.

Q. Now you separate that also into cost for passenger trains and freight trains, do you not?

A. Yes sir, it is your total operating expenses divided by your total train mileage.

Q. Have you such a table as that in printed form?

A. For the entire system?

Q. For the entire system?

A. Now I cannot say as to whether it is in printed form, but I believe there is such a table in existence.

Q. Could you, without much inconvenience, give the cost to the Missouri Pacific System?

A. For what period?

Q. Well, for the year 1905?

A. Yes sir.

Q. I will ask you to do so. Mr. Johnson, who makes your mail contracts with the United States Government?

A. Now, I cannot give you the title and yet he has been here as long as I have been, his name is O. L. Teauchout, he is superintendent of mail service, I believe.

Q. Those contracts are referred to the general office, of course, the auditor?

A. I believe they are.

Q. And the income from the carriage of mails is charged up, of course, as an earning and is kept in an account by the auditor?

A. Yes sir.

252 Q. Do you know whether or not the Madison line is carrying any mail for the Government?

A. I cannot answer that.

Q. Your auditor can?

A. The auditor can; I believe you have a statement which is part of the record showing the mail earnings.

E. M. CURTIS, recalled for plaintiffs, further testifies as follows:

Direct examination by Mr. TAYLOR:

Q. You have all of the records of the Missouri Pacific Railway Co. here at this office that have been kept from the first organization of the company, have you not?

A. We have the general records of the company.

Q. When the Missouri Pacific Railway Co. assumes control of another line by purchase, you keep an account of that fact, do you not, and of the cost?

A. If the Missouri Pacific purchased an interest in another line we would have a record of it.

Q. I believe you stated in answer to some of my questions on cross-examination in your evidence for your company that the Missouri Pacific Railway Co. obtained control of the Interstate Railway Co. through the purchase of the bonds of the Interstate Railway Co., and the purchase of a majority of its stock, is that true?

A. Something of that kind, yes sir.

Q. I wish you would make up a statement showing what amount the Missouri Pacific Railway Co. paid for the bonds it holds of the Interstate Railway Co., that statement to include, of course, the bonds issued to the old St. Louis & Emporia Railroad Co., and the original Interstate Railroad Co., those two companies, as I understand it, having been consolidated into what is known as the Interstate Railway Co.

253 Defendant's counsel objects to the question as irrelevant and immaterial; objection overruled.

Q. Will it be necessary for you to prepare that statement or can you give it from memory?

A. I can give it pretty closely from memory.

Q. I would like to have it accurately, but what is your memory on it?

A. We paid $1,095,000.00 for the stock and bonds.

Q. Did you buy all of the bonds?

A. We bought all of the bonds.

Q. From the construction company?

A. Yes sir.

Q. And you bought all the stock?

A. That I do not recall, whether we had all of the stock or not.

Q. From an inspection of your records can you tell what the original issue of capital stock was?

A. Yes sir, I recall that the original stock was $1,622,800.00 in shares of $100.

Q. How much of that stock does the Missouri Pacific Railway Co. own?

A. That I do not recall, I would have to get that from my records, they are not in this building, they are here in the city, but at Seventh and Popular Street.

Q. Do you know what the bonded indebtedness of the Madison line was and is?

A. $1,622,000.00, I know there is a difference between the capitalization and bonded indebtedness of $800.

Q. The Missouri Pacific Railway Co. then paid the par value of the bonds?

A. Well, it paid the sum I gave you a few moments ago for the two.

Q. It actually paid that in money, did it?

A. Yes sir.

Q. How did you divide that up on your books?

A. We carried the bonds for the full cost, except, as I recall it, we valued the stock at $1 a share.

Q. What was the par value of the stock?

A. That would have been carrying the stock at $16,228.00
254 and the bonds at the difference between that and the cost, something over a million it was placing a nominal value on the stock at a dollar a share.

Q. You fixed the value on the bonds and stock arbitrarily in order to affect the value of the bonds upon the market?

A. No sir, the bonds were never on the market.

Q. Why did you place the value of the bonds in this purchase at practically par and fix a nominal value on the stock?

[illegible]at the stock was considered to be worth.

Q. You think that was what the stock was considered to be worth at that time?

A. Yes sir.

Q. Can you give the bonded indebtedness per mile, what did that amount to per mile?

A. About $16,000 a mile, and I recall it the mileage is something like 100 miles.

Q. So the road then actually cost the Missouri Pacific Railway Co. approximately $16,000. per mile?

A. I have not so testified.

Q. But, in fact, that is about what it did cost the Missouri Pacific Railway Co., isn't it?

A. I have given the cost of the road to the Missouri Pacific Railway as one million and ninety-five thousand dollars.

Q. Was the construction company which built this line of road an independent company separate and distinct from the Missouri Pacific Railway?

A. My recollection is it was, yes sir.

Q. But this line of road was really built for the Missouri Pacific?

A. No, I think not.

Q. You don't know that that is so?

A. No sir.

Q. The Missouri Pacific Railway Co. of course operates all these lines without any regard to State lines?

A. That is true, yes sir.

Q. And it considers that every branch is of some value to the system, does it not?

A. They are supposed to be of value, yes.

255 Q. I will ask you if it is not considered as unfair, speaking now of the system, in estimating to segregate a branch which contributes to a main line so far as its expenses and earning capacity are concerned?

A. I do not see that it should be unfair, it should be self-supporting in itself at any rate.

Q. Isn't it a fact that all railroad systems maintain lines that have very little profit in them for the purpose of using them as feeders for the main system?

A. I should not say all do, a great many, I suppose, do, there are some roads—I was thinking of the Chicago & Alton that had not any

unprofitable branches, they run their main lines to St. Louis, Kansas City and Chicago.

Q. The purpose of buying the Madison line was in order to have a feeder in that territory, wasn't it?

A. I don't think that I am competent to answer as to the purpose.

Q. That is generally the purpose of buying a line of that kind, isn't it?

A. I should say so, yes sir.

Q. Your department has nothing whatever to do with the operating department?

A. Nothing at all.

Q. How trains are run, or anything of that kind, you simply handle the income of the road and the expenses?

A. That is all.

Q. You are not carrying the mail on that line of road now, are you, for the Government?

A. I cannot say.

Q. Who would know that?

A. Mr. Teauchout, I presume.

Q. Have you a superintendent here in the building?

A. No sir.

Q. You have a department——

A. We have a general manager.

Q. Is he here?

A. I cannot say, I have not seen him to-day, he was here yesterday.

Q. When you were on the stand for the defendant in this case I believe you explained Exhibit G which was introduced in evidence, which is a statement of freight earnings and expenses of the
256 Kansas portion of the Madison line of the Kansas & Colorado Pacific Railway for the period May 1st, 1905 to and including March 31st, 1906, by months; this table, I think, was based upon a very large exhibit which was made out in pen and ink showing the amount of freight that was delivered to the Madison line, and the amount of freight that the Madison line delivered to other branches of the Missouri Pacific System——

A. I might interrupt you, that was introduced, I think, by Mr. Nugent in his testimony.

Q. The statistician?

A. Yes sir.

Q. Did you have anything to do with the preparation of that?

A. Not directly, no sir.

Q. Did Mr. Nugent do that?

A. Mr. Nugent did it, yes sir.

Q. Now, what I want to ask you about, and I presume you will know about it, is I noticed on all the traffic that originated on the Madison line, for instance, if the haul was to St. Louis and 100 miles of the haul was on the Madison line and 400 miles of it was on other lines of the Missouri Pacific to St. Louis, that the share credited to the Madison line would be 20 per cent., we will say, being one-fifth of that mileage?

A. Yes sir.

Q. Now, as I understand it, that was the basis upon which that table was compiled?

A. Yes sir.

Q. And Exhibit G was made up from that table showing the earnings and expenses of the Kansas portion of the Madison line, the expenses, of course, being charged on the same basis?

A. The expenses were localized wherever possible, though.

Q. Let me ask you if the Madison line were an independent line wouldn't it charge a greater proportion than twenty per cent. of the haul on the business that originates on the line?

257 A. I might say that the basis for the division of revenue between the properties in what is known as the Missouri Pacific System was an award that was made by two gentlemen about 1881 or '2, we speak of the Galt and Tucker award, taking this name from the two gentlemen who made the award, Mr. Jay Gould had called them in at the time he acquired his interest in the southwestern roads, at that time there was the Texas & Pacific, the M. K. & T., the International and Great Northern, the Iron Mountain and the Missouri Pacific, and the basis of their award was a mileage pro rate with certain arbitraries.

Q. That don't answer my question?

A. That is the basis we are using to-day.

Q. You are using a basis that was agreed upon by your own company?

A. No, these gentlemen were not in the employ of the company, I think one of them at that time was with the Wabash and the other was with the Illinois Central.

Q. It is not customary to divide earnings in that way, is it?

A. Yes sir, I think it is.

Q. Whether the roads are combined in one system or not?

A. Yes sir, I think you will find that pretty near all the divisions are made on a mileage pro rate between lines.

Q. Isn't it customary for the initial carrier to charge a larger per cent. than the proportion of mileage that it might be entitled to for the whole haul, isn't it customary for it to charge from forty-five to fifty per cent.?

A. I don't think so, I don't think it is customary.

Q. What is the custom with reference to shipments that you receive from other lines?

A. If you want testimony of that character you had better obtain it from the people who make the divisions.

258 Q. Who makes them?

A. That would be our traffic department, our general freight agents.

Q. You don't have anything to do with that?

A. No sir.

Q. What is his name?

A. Our traffic manager is W. C. Stith—he is not in town to-day, though.

Q. Who is the next?

A. You could get Mr. Burnett, he is the assistant general freight agent.

Q. That is all I wanted to ask you, and if you will send him up we will relieve you?

A. I will try to find him.

Cross-examination by Mr. DOSTER:

Q. Were you with the Missouri Pacific Company when the Madison branch line was purchased?

A. Yes sir.

Q. That line was built by a syndicate of Kansas gentlemen, that is they had it built, did they not?

A. I understood it was started in that way, by some of the local people.

Q. Senator Plumb and some other gentlemen associated with him?

A. I can't say that of my own knowledge.

Q. How far towards completion as a road ready for operation was that line when the purchase was made?

A. Really, I do not know, sir.

Q. Do you know whether it was ready for the running of the cars?

A. I think part of it was completed and some trains were running, but not the full distance.

Q. Do you know whether it was ironed?

A. It must have been if they were running the train.

Q. Yes, I know, but I mean all the way?

A. Oh, no, I don't recall that it was, I think a considerable portion of it was built after the Missouri Pacific obtained an interest in it.

Q. Do you know whether the Missouri Pacific completed it?

A. It was completed by the contractors but not by the Missouri Pacific.

Q. Do you know whether it was completed by the con-
259 tractors for the cost that you have mentioned?

A. Well, I couldn't say, I have no idea what the original cost was.

Q. From your knowledge of the cost of construction of railway lines, cost of completion of railway lines, could that road have been completed, graded, tied and ironed all the way through ready for the cars for the sum you have named?

A. I don't know that I am competent to answer that question, Judge.

Q. You don't know whether the road was actually completed and ready for the running of the cars, or whether the Missouri Pacific added any original cost to it?

A. I don't think the Missouri Pacific added anything to the cost, they purchased it outright constructed to its present terminus.

Q. Of course no dividends have ever been paid on this stock of that line, have they?

A. No sir.

Q. Do you know whether the bonds issued by the line were on the market, or were they purchased direct from the original holders?

A. They never were on the market, never quoted.

Q. None of those branch lines of which we have been speaking have any rolling stock of their own?

A. Some of them have.

Q. I mean has the Madison Branch lines?

A. What used to be known as the Fort Scott, Wichita and Western had a small amount of equipment.

Q. I am not speaking of that, I mean those lines that compose the Madison Branch?

A. No sir, they have no equipment.

260 A. R. DUNCAN, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. TAYLOR:

Q. What position do you hold with the Missouri Pacific Railway Co.?

A. Car accountant.

Q. Your office is here in St. Louis?

A. Yes sir.

Q. At the general headquarters of the road?

A. Yes sir.

Q. Do you receive the wheel reports from all of the lines of the Missouri Pacific System?

A. Yes sir.

Q. Have you a record in your office of the wheel reports of the Madison line?

A. Well, as far as I can tell now we have a complete record of them, I will know positively tomorrow as we expect to have this all completed tomorrow, the information that was requested.

Mr. TAYLOR: That being the case I presume we had better postpone taking your testimony until that report is completed.

J. P. BURNETT, sworn for plaintiffs, testifies as follows:

Direct examination by Mr. TAYLOR:

Q. What position do you hold with the Missouri Pacific Railway Co.?

A. Assistant general freight agent of the St. Louis, Iron Mountain & Southern

Q. You are not an officer for the whole system?

A. Well, in our allotment of work I am not, but I am acting for the entire system, that is the Iron Mountain and Missouri Pacific System.

Q. The general freight agent is away from the city now?

A. He was out of town yesterday, I am not certain whether he is here to-day or not.

Q. How long have you been engaged in the kind of work that you are employed at at the present time?

261 A. I have been in the company since 1899, I have been in the freight traffic department since 1898.

Q. Have you worked for other railroads in the same capacity?

A. No sir.

Q. From your experience in your department do you know what division of freight earnings is awarded to the initial company delivering freight to your line?

A. It depends largely on conditions, what I mean by that is the length of the line and all that has something to do with it.

Q. Well, we will suppose that a line is 100 miles or 125 miles long and it receives a car load of cattle and hauls that over 50 miles of its line and then delivers it to another carrier, isn't it customary for that kind of a line on that kind of a haul to receive 45 to 50 per cent. of the earnings?

A. No sir.

Q. What is the custom?

A. The general basis which is recognized I think by most lines is a mileage pro rate with a minimum usually for the short line.

Q. Now, what is that minimum?

A. That minimum is usually 50 miles.

Q. I wish you would explain a little bit further what proportion of the earnings would a road be entitled to that hauled it 50 miles or more, the initial carrier?

A. There would be an actual mileage pro rate with the minimum of 50 miles for the short line.

Q. In other words, if the short line hauled a car load of stuff 20 miles and delivered it to your line of road and you carried it to destination, we will say 200 miles on your line, the initial carrier would be entitled to twenty per cent. of the earnings?

A. They would be entitled to a mileage of 50.

Q. Which would be one-fifth of that 250 mile haul, is that
262 correct?

A. It would be the same as if they handled it 50 miles.

Q. You say that custom prevails?

A. That is the general basis.

Q. Adopted by all companies and recognized by the railway systems of the United States?

A. That is making it very broad; we only know as to the lines with whom we deal, I cannot speak for all of the lines of the United States.

Q. You deal with a great many lines?

A. Yes sir.

Q. And you know that that is the rule so far as your dealings with other lines is concerned?

A. That is the recognized basis.

Q. Did you assist in the preparation of that table showing the earnings that the Madison line was entitled to receive from hauls of freight originating on that line to points off the line?

A. No sir.

Q. That was prepared in your office, wasn't it?

A. Not to my knowledge.

263 JOHN NUGENT, recalled for the plaintiffs, testifies as follows:

Direct Examination by Mr. TAYLOR:

Q. Do you remember the pen and ink exhibit which was prepared showing the proportion of earnings that the Madison line was entitled to for freight delivered to it, and freight originating on that line and passing on for delivery to other lines?

A. I do.

Q. In making up the estimate in that exhibit for outgoing freight what was the basis of proportion, what minimum did you use, if any?

A. The division of earnings was made on the basis of the haul.

Q. You used no minimum then?

A. Not that I know of. Another department furnished the percentages.

Q. What do you mean by another department furnished the percentages?

A. We have what is called the division of earnings department and that supplies the percentages for any statement of this kind.

Q. What were those percentages?

A. I just made the inquiry there and they said the actual haul was used, the Madison line got its proportion of the haul.

Q. It should, as a matter of fact, have had more than that on hauls under fifty miles according to the custom as explained by the freight traffic department?

A. I don't understand that.

(Question read.)

A. Well, I can't say whether it should or not.

Q. If it is the custom of the Missouri Pacific Railway System and other railroads with which it deals and exchanges traffic to allow a minimum of fifty miles even though the haul may be only ten miles then the statement you prepared, the pen and ink exhibit referred to, and upon which Exhibit G of the defend-

264 ant's testimony was based, is inaccurate as to the exact amount of earnings that the Madison line should have received?

A. I say yes to that.

Q. You could not state to what extent it is inaccurate, could you?

A. I could not.

Q. The statement, as a matter of fact, shows less earnings than the road is really entitled to?

A. Yes, if the 50-mile minimum is the proper basis for making the division.

Cross-examination by Mr. DOSTER:

Q. You say the figures as to these proportional earnings were furnished to you by another department?

A. Yes sir.

Q. They were furnished to you as the proportion that was used in

computing the earnings to be credited to the Madison branch, were they?

A. For the purpose of making up the statement only.

265 FRED P. JOHNSON, recalled for the plaintiffs, testifies as follows:

Direct Examination by MR. TAYLOR:

Q. Did you make the investigation and prepare the tables of figures that I asked for this morning?

A. Yes sir.

Q. I will ask you now to take up the first statement you have there.

A. The first statement is an approximate statement of the cost per train mile for the Missouri Pacific Railway System for the year 1905 showing the freight expense and passenger expense, freight and passenger train mileage and the average cost in cents.

Plaintiff's counsel offers in evidence the exhibit referred to, and the same is marked Exhibit B.

Q. I will ask you to explain what the next is?

A. I have a statement showing the number of agents, the amount of salaries paid from January 1st, 1903, to June 30th, 1905 by the months, showing the number of agents, the salaries paid, the ticket commissions paid them and over time. In addition to that statement I have a statement of three stations on that road that are joint with other roads, the proportion of which expenses should be charged to the Madison line. They are not included in this. The foot note shows that. They are in separate tables.

Plaintiff's counsel offers in evidence the exhibit referred to, and the same is marked Exhibit C.

Q. Exhibit C shows the exact amount of salary paid to the thirteen agents employed between the stations of Monteith and Madison, inclusive?

A. Yes sir.

Q. As shown by your pay rolls I presume?

A. Taken right from the pay rolls. Those stations are stations on the line from Monteith Junction to Madison.

Q. Do you know how many of those stations are in Missouri between the Kansas and Missouri State line and Monteith?

A. I meant to have looked that up for you, I believe there
266 are two, I can see in just a minute.

Q. I wish you would look it up?

A. We have two stations in that list of thirteen that are in Missouri, Foster and Ward.

Q. Are the agents of those two stations paid the same salaries that the agents are paid over in Kansas?

A. As to that I cannot say, salaries will vary.

Q. They do vary?

A. Yes sir, all over the system based on the amount of business the station handles.

Q. There probably would not be but very little difference?

A. Very little difference.

Q. We will pass to the next exhibit you prepared?

A. The next statement is a statement of expenses at Leroy, Kansas. Butler Missouri, is a junction point of the Madison line and it has been customary for us to charge one-third of the expense at Butler, Missouri, to the Madison line. For that reason I have shown the expenses separately. Blue Mound, Kansas, is a joint station, joint between the Madison line and the K. M. & D. Fifty per cent. of the salary is charged to the Madison line. Leroy, Kansas, is joint with our Missouri Pacific.

Plaintiff's counsel offers in evidence the exhibits referred to and the same are marked respectively Exhibits D, E and F.

The WITNESS: I have here a statement showing the expenses in detail by the month, the wages paid conductors and brakemen, baggagemen, heating and lighting cars, oiling cars and cleaning cars, engineers and firemen, round house expenses, fuel for locomotives, water for locomotives, oil, tallow and waste for locomotives, and sand furnished locomotives, covering the operation of trains on the line from Butler to Madison.

Plaintiff's counsel offers, in evidence the exhibit referred to and the same is marked Exhibit G.

267 Q. Now, the next table, explain it?

A. I have here a statement of expenses on account of repairs of roadway, repairs and renewals of bridges and culverts, repairs and renewal- of fences and road crossings and repairs and renewals of telegraph by the month.

Q. Are the charges set forth in this table specific charges against the Madison line?

A. They are local charges, or, rather, charges local to the Madison line based on labor performed by the various section men and various other employees.

Q. Upon that line?

A. Upon that line.

Plaintiff's counsel offers in evidence the exhibit referred to and the same is marked Exhibit H.

Q. You say it can be run off on the typewriter so as to show the same figures?

A. Yes sir, to make it uniform.

Q. I believe that answers all the questions I asked you this morning?

A. That is all you asked for.

Cross-examination by Mr. DOSTER:

Q. Do the statements that you have furnished us tabulate all the expenses of the operation of the Madison Line?

Q. You have tabulated all that Mr. Taylor called for in his questions?

A. Yes sir.

Q. What other expenses, I do not mean in amount, but by name and designation of character, are there?

A. Under maintenance of way and structures there is an account we call renewals of fastenings, frogs and switches, and then our repairs to furniture and fixtures in the general offices, a proportion of which is chargeable to the Madison line, and miscellaneous account, not very large, but it will cover a sum under the maintenance of way. Under the account of conducting transportation we have not covered anything by the statements. There is no general ex-
268 pense in here. These statements simply cover the special accounts called for.

Q. Can you approximate the yearly amount of expenses that are not shown by these tables?

A. I could if I could see that file over there.

Q. Which?

A. The original statements (referring to the exhibits previously introduced during the taking of defendant's testimony). I should say about $30,000—not yearly, but covering the period for which the statements are compiled, really two years instead of one year, say $30,000 for the period.

Q. Have you named all the different items of expense not shown by the tables?

A. I believe I have covered them all.

Redirect Examination by Mr. TAYLOR:

Q. Would not $10,000 for the Madison line be expensive for general expenses?

A. Not altogether, certain items under conducting transportation, what we call contingencies.

Q. You think it would amount to as much as that?

A. Yes sir, the statement shows it. Of course they are not what we call local expenses, it is the proportion of the system expenses they must bear in most cases.

Q. That is based on the proportion of the mileage of the Madison line with the whole system?

A. To the K. & C. P. Railway.

By Mr. DOSTER:

Q. It would be more than $10,000 annually?

A. Yes sir.

By Mr. TAYLOR:

Q. Is the expense of section hands included in any of the exhibits which we have just introduced in evidence?

A. I should say fully ninety per cent., if not more. The expense of section hands is included in repairs of roadway, but a section gang is apt to do most anything it is called on to do, and in getting the labor of section men you would not get the cost of doing any particular class of railroad repair work.

269 C. J. McPherson, recalled for the plaintiffs, testifies as follows:

Direct Examination by Mr. Taylor:

Q. You are the assistant general manager?

A. Well, I am assistant to the general manager, that is my title.

Q. How long have you been in the service of the Missouri Pacific Railway Co.?

A. Well, I have been in the service on two occasions. There was quite a gap. I went to work for them first in 1883, 23 years ago.

Q. And then you went out of the service afterwards?

A. Yes sir, I was out of the service for some years.

Q. You have been with them a number of years the last time?

A. Yes sir.

Q. Have you been over the Madison line?

A. No sir.

Q. Never took a trip over that line?

A. No sir.

Q. You do not know anything about the country or the road?

A. Not from personal observation.

Q. Your road had a mail contract with the United States Government for carrying the mail from Butler over to Madison, Kansas, on that line, which paid you, I believe, annually, something above $5,000, and your road permitted that contract to be cancelled by the Government or to lapse and it has never been renewed. I wish you would state the reason why your management suffered that line of road to lose that mail contract?

Defendant's counsel objects to the question as irrelevant and immaterial; objection overruled.

A. I don't know why the contract was cancelled. It was claimed that it was because we took so long a time to perform the service between terminals, but it was no longer time than we had taken for years and the service was regular as to departing from the objective points and arrival. The Government arbitrarily cancelled the contract, and that is all I know about it.

270 Q. You know, as a matter of fact, they carry the mail by a star route overland between the same points?

A. I don't know it, I presume they do. I think it is quite possible for the reason that the mails can reach pretty near any point on the line from other lines running north and south in the direction of the principal traffic in that part of the country.

Q. I will ask you if an income of $5,000 a year for the carriage of mail did not to a great extent help pay the running expenses and especially the train service on that road?

A. Any revenue we would secure would, of course, contribute towards the expense of the entire service.

Q. The actual amount of salary paid to your trainmen would hardly be in excess of the income of the mail contract per month?

A. Greatly in excess of it.

Q. Not more than double, would it? That is figuring on two

trains a day, one from Madison east and one from Butler, Missouri, west.

A. I could not select any individual items of expense and make such a comparison.

Q. Well, I am selecting that item for the purpose of a comparison?

A. I don't know, I would have to look at my figures in order to tell any where near the items that go to make up the expense.

Q. Well, an exhibit has been introduced in evidence here by Mr. Johnson showing the total expense as well as an itemized account of the cost of the train service upon the Madison line. Now, if the loss of that mail contract was practically a loss of 25 per cent. of the income necessary to have paid the train service, or 50 per cent., it was too great a loss for the road to suffer, was it not?

Defendant's counsel objects to the question as irrelevant and immaterial; objection overruled.

271 A. We had understood that the contract was cancelled through influences brought to bear politically on the department by parties interested in this case.

Q. Do you think that anybody along that line used such influence?

A. It was intimated to us that such was the case.

Q. Have you any knowledge beyond the intimation?

A. I have no knowledge beyond the intimation but it was coincident with these proceedings that we received the notice.

Q. You merely draw the conclusion because it was coincident with these proceedings?

A. I can't recall now the source of my information, but it was intimated that the two incidents were closely related.

Q. If you had maintained a passenger service upon this line you would not have lost the mail contract, would you?

A. I don't know.

Q. It is safe to say that your passenger train would have been able to make its schedule and arrive at the respective stations on the line in time?

A. The Government proceeded to weigh the mail in the usual manner on that line and with the evident intention of continuing the service. We had a mail weighing this spring on our Kansas lines, and there was nothing so far as we know occurred to change the intention of the Government until we got the notice.

Q. Is it not a fact that your mixed train operated on that line of road was very frequently delayed several hours in switching in passing from Butler, Missouri, over to Madison, and from Madison back to Butler?

A. Whatever work was necessary to do they did, I could not say they were delayed several hours. Our record of the service shows they left Madison and Butler on time as a rule and arrived on time as a rule.

272 Q. Of course there are days when trains run late, probably some times quite late?

A. Not in recent months. The service this year has been

practically a service on time. Of course there are occasional days the trains will be late any where, all kind of trains.

Q. Have you for the past year or two maintained any special man along that line or sent any freight agent or traffic man into that territory for the purpose of soliciting business?

A. I have nothing to do with the traffic department, I don't know.

Q. You do not know anything about that. You do not know whether your road has made any effort to get any business in that country?

A. As a general proposition I think our men work as hard for business as any railroad's soliciting agents in the country.

Q. You do not know whether any were sent in that territory to work for that line?

A. Our traffic department officials could answer that.

Q. Well, the traffic on that line of road has fallen off considerably since you first had any knowledge of it, has it not?

A. The traffic of that line, like a great many other Kansas lines running east and west, will vary with the crops. The line is unfortunately situated, it is crossed every six or seven miles, every few miles, by lines running north and south converging at Kansas City, and Kansas City is the market for that part of the country. While ordinarily a company should get its share of the business five or six miles either side of its track it is not possible for that line to do so. That business will naturally seek the line that will take it quickest to its market and the market for that territory is Kansas City, to which our distance would be considerably longer.

Q. Not so very much longer than some other lines would
273 it? You take it from Madison, Kansas, the Santa Fe has to haul its stuff to the main line and carry it over the main line to Kansas City, whereas your road would carry it to Butler, Missouri, and then go north to Kansas City?

A. And then return west.

Q. You have practically the same distance into Kansas City as the Santa Fe has?

A. I have not figured up the distance so I could testify on that point, I merely take the situation as it is. The heavy lines running frequent trains north and south will naturally get the business from that territory going direct to the market.

Q. You have the 'Frisco and the Katy and the Southern Kansas across there, three continuous lines, that is all, is it not?

A. I think some of them cross twice, don't they?

Q. There are some other lines, I don't mean main lines, or important lines. The others are branches?

A. It is only necessary to look at the map to show the general direction of all those lines to Kansas City and to show that the Madison line would be obliged to go far out of its way, would have to practically go both sides of a right angle triangle in order to accomplish what the other lines would do with the hypothenuse.

Q. You have the line from Leroy to Kansas City which gives you a much shorter distance from Madison to Kansas City than the Santa Fe from Madison. It has been given in evidence that your road has

lost a large amount of cattle traffic from Madison, Kansas. How does it come that you no longer make an effort to increase your traffic from Madison via Leroy to Kansas City over your line?

A. I am not aware that that is the case.

Q. Are you aware that your business has not fallen off at that point?

274 A. I have not looked into the traffic part of the matter beyond so far as the railroad's natural operation is concerned. This traffic, particularly live stock, in these days when it is presumed that rates are equal will go in a direction that will make the best time.

Q. You ought to be able to make better time from Madison to Kansas City than the Santa Fe does, you have less miles to travel?

A. I have not figured it up.

Q. By Leroy?

A. I have not gone into the figures.

Q. There is a portion of the Madison Branch over to Leroy and from Leroy to Kansas City that is almost a direct line, and the Madison branch would get its share of the earnings if it handled the Kansas City traffic, especially the cattle traffic, and the cattle traffic is large from Madison to Kansas City?

A. The management of the Missouri Pacific road will get all the business it can.

Q. I think that is true, but you have never devoted any special time to this branch, have you?

A. As I said before I could not tell you definitely because I have no connection with the traffic department.

Q. Well, do you mean to say you have no knowledge of what the traffic department is doing, does not the traffic department and the operating department and the gen-ral manager—are they not all in touch with each other?

A. Not as to details of soliciting on the particular part of the road.

Q. If the traffic department discovers that the receipts are falling off from a certain line, steadily doing so, don't they call the attention of the general manager to that fact, is he not supposed to know that?

A. The general manager's office gets reports generally of the result of operations on the road and it would be obviously impossible for it to be acquainted with each detail of the work of 100 to 125 or

275 150 soliciting agents. The traffic department has those details in charge.

Q. Well, is it not elementary in railroad work that if you do not give good service you cannot get good business unless you have a monopoly?

A. Is the inquiry directed towards our freight service?

Q. Both, because Judge Doster has raised the question, he alleges that to put the service on would be confiscatory, he has gone into the question of freight and passenger earnings both.

A. I do not understand we give an unsatisfactory freight service, I understand our freight service is to-day a satisfactory one.

Q. Don't you know that the business of the road has been very seriously affected by poor service, that is, the lateness of trains, the failure to run trains, those mixed trains I am speaking of, upon

schedule, the failure to make connection so stock might be delivered as promptly as other roads deliver it? Is it not a fact that the railroad has failed to give the kind of service that the public demands, and which other roads give?

Defendant's counsel objects to the question as irrelevant and immaterial, stating that there is no complaint here except as to the passenger service; objection overruled.

A. On the contrary the Missouri Pacific has given all the service that the public demands. The demand for any service is measured by the revenue that it brings in its carrying, that is the only way the demand can be measured.

Q. Do you think there might be a natural demand for a certain service that would bring about the inauguration for that line of that service on that road?

A. Do you mean a natural demand?

276 Q. Yes?

A. If the demand on that branch or any other branch measured in dollars and cents, which is the test, was great enough, we would be glad to run six trains in each direction.

Q. I think that is true. You cannot get business unless you go after it, can you?

A. If you are geographically situated as favorably as other lines to handle the business to the points to which it wishes to go and the business is there you will get it. If you are not, and the business is not there no amount of solicitation will get it your way.

Q. If 75 or 80 per cent. of the business that there is in that country through which the Madison line runs is carried over other lines, it is pretty safe to assume that you are not getting your share of it, is it not?

A. That would be an absolute conclusion.

Q. There are ways known in the railway service to get a share of the business, are there not?

A. If you are geographically situated for it and you are on the same basis as your competitors, yes. Otherwise there would be no way for you to get it, unless you committed an unlawful act in cutting rates. We are not in that business.

Q. You would rather your road would be without business than to cut rates in order to get business?

A. It is not a matter of disposition, it is a matter of violation of law.

Q. To cut rates?

A. Is it not? You are a lawyer.

Q. I do not know that it is a violation of law provided you give the proper notice you are going to make a cut, it would be to make a cut and put it into effect tomorrow without notice, because that would probably be considered to be giving a rebate or special privilege. Your company introduced in evidence in the evidence in chief a table marked Exhibit C, showing the amount of passenger

277 earnings and passenger expenses, and showing a deficit for the years 1903, 1904 and 1905 of $76,182.72. They also intro-

expenses and showing a deficit from May, 1905 to March, 1906, a total of eleven months, of $72,632.96; if those tables are true why is it that no effort is made to increase the earnings of that line of road?

A. I am not aware that no effort is made.

Q. If you are doing anything I wish you would state to the Referee what you are doing to increase your business on that line of road?

A. You will have to ask the traffic department what their work is in the way of solicitation. What we are doing in the operating department to increase the business is to run the trains for which there is any demand and to furnish all the cars demanded and after the cars have been furnished and loaded to move them promptly.

Q. You do not know of anything that has been done or is being done to stimulate the demand for cars?

A. That is out of my jurisdiction.

Q. You only furnish the facilities to handle the traffic that is offered and you pay no attention whatever to procuring any traffic for the line?

A. That is the duty and scope and operation of the traffic department.

Q. I had an idea that a general manager's office had something to do with all other departments, am I right in that?

A. It depends on the organization of your road, as roads are organized to-day the general traffic manager is a co-ordinate officer with the general manager.

Q. Well, if those statements which I have referred to above are correct you cannot afford to own the road, can you?

A. I don't think there is anybody on the Missouri Pacific that is specially enamored of the title to it.

278 Q. Why don't you sell it to some road that can operate it profitably?

A. I might say in reply to that that we find it here as a part of the line to be operated and we do the best we can in satisfying the public demand. It is a question for the directors and stockholders who own the property to speak of that.

Q. It is not a question of whether you want to give it away or sell it with you?

A. With us it is a condition that we meet, and we operate it to the best of our ability to earn all there is out of it.

Q. Now, I will ask you if it is not a fact from your knowledge and experience as a railroad man that if the train service was increased on the Madison line, a passenger train to handle the passenger traffic, and a solicitor sent to that line for the purpose of becoming acquainted with the people and soliciting business, that the business of the line would increase?

A. I do not admit that our traffic department is guilty of any shortcomings in the soliciting of all business there is to be had, but if the business can move to its market more quickly by other lines then no amount of soliciting will withdraw it to the east and west line.

Q. Now, that may be true with reference to stock, but it would not be true in reference to dead freight, would it?

A. Any freight.

Q. Is it not recognized in railroad circles that the length of haul does not make any difference so far as dead freight is concerned unless there is some point in the time of delivery where it is necessary to make quick delivery?

A. There is no such admitted idea as that.

Q. Is it not a fact that the longest routes to certain points often get a large share of the business, even though their mileage may be greatly in excess of the shortest route to the points?

279 A. That may be history. The question of deliver- on a railroad promptly cuts just as much figure in its business as it would with a corner grocery.

Q. And you have a line of railroad here that is only 108 miles long from Madison to Butler and you can make that run in a day with a freight train and from Butler to Kansas City the run can be made in less than a day, don't you think that your line with its connections is in shape to get a large proportion of that business to Kansas City if it is operated right and the proper solicitation is made to get it?

A. We do get a fraction of the business. We do not admit that it is not operated as well as any other *other* lines. We believe that the service given is all that the public along the line demands. I called attention a little while ago that every seven or eight miles there is a cross line going directly to Kansas City.

Q. The public seem to be demanding a passenger service. You mean that your service you think at the present time is all that the public requires instead of demands? I guess we mean the same only you express it in a different way?

A. By demand I mean what the public is willing to pay for. Now, in the passenger business there is no stretch of imagination in which you could indulge that would picture a man going to Butler, I mean going from Madison to Butler, in order to get to Kansas City.

Q. Well, he probably would not go unless there was a right connection at Butler so he would lose no time?

A. If I may be pardoned a digression here I will say that, as I stated before, our freight service is performed daily on that line, and we meet every demand to move the freight that is offered to us. The passenger service will not move any further on that line than the nearest junction of a road going direct to Kansas City.

280 The lines going to Kansas City reach into the southwest and south, they have a large territory to cover, and converge very close to that line, perhaps several of their lines give them a better passenger service to Kansas City and people will naturally take it. Ten trains a day, Pullman cars, would not induce people to travel from Butler to Kansas City and people going east to St. Louis will go to Kansas City and kill two birds with one stone.

Q. That is a very direct route to St. Louis over your other line to St. Louis, isn't that true?

A. It might be except for the conditions that exist, that people in that vicinity look to Kansas City for their market, their bank connections are in Kansas City, their wholesale connections are in Kansas City and if the business is such as to draw them east of Kansas City they naturally go to Kansas City on their road.

Q. Don't you think the local travel would be stimulated considerably if you had a passenger train on there every day?

A. I don't, we tried the experiment for 18 months and it was not a success. The business the last month of the 18 was even less than it was the first. I am not sure but it was 22 instead of 18, I think it was.

Q. You operate your lines upon the theory that it is not incumbent on you to maintain a passenger service under your general charter?

A. That raises a question of what is a passenger service.

Q. I do not mean a mixed train, I mean a separate passenger service?

A. We furnish a coach and passenger service in our mixed trains.

Q. But that is acknowledged by all railroad men to be
281 more dangerous than a separate passenger service on account of the coupling and uncoupling of the trains?

A. I don't think it is.

Q. You do not think it is more dangerous?

A. I do not think as a general rule a mixed train travel is a particle more dangerous than a regular passenger train service. I know of nobody on that line who has been killed or hurt through that mixed train service.

Q. What I was asking you about was the general experience of railroad men. It is so held by courts and handed down in opinions, &c., that it is more dangerous, does not that accord with your experience, on account of the coupling and uncoupling of cars that it has that tendency?

A. Those opinions, I suppose, would be subject to modifications, from the safety appliances used in the latter days of automatic brakes and couplers.

Mr. TAYLOR: That would have something to do with the safety of travel on mixed trains and also the care the engineer would use in coming back to couple again.

Cross-examination by Mr. DOSTER:

Q. You were asked why you did not sell this line to some independent railroad company, do you suppose it could be done?

A. I don't suppose there is anybody who would take it.

Q. Could you give it away burdened with its indebtedness?

A. I can only say I would not take it burdened with its indebtedness and be responsible for any results of paying expenses. I am speaking personally in that matter.

Redirect examination by Mr. TAYLOR:

Q. You could sell it for something more than it cost to construct it if you desired to do that, couldn't you?

A. I doubt very much that it could be sold at any price.

Q. I mean without the indebtedness now?

A. You mean give it away?

282 Q. I do not mean to give it way, I mean to sell it. It is worth something, is it not?

A. Personally I have never been able to discover its value.

Q. Is it not worth what it cost to build it per mile?
A. It is very doubtful, I do not want to be misunderstood in that last reply, that the road has deteriorated since it was built, I mean to imply the road was a mistake and never ought to have been built at all.

At this point the further taking of testimony was adjourned until 9 a. m. August 9th, 1906.

283 Pursuant to adjournment, as above stated, on August 9th, 1906, the taking of the testimony was resumed:
Present: Carr W. Taylor, Esq., counsel for plaintiffs, and Frank Doster, Esq., counsel for defendant.

A. R. DUNCAN, recalled, further testifies as follows:

Direct examination by Mr. TAYLOR:

Q. Have you finished the statement that you were preparing for us yesterday?
A. Yes sir, all of the statement that the conductors' train books would show, they are not kept in the office but can be furnished by the general superintendent.
Q. What is the difference between the facts shown between the wheel report and conductors' train book?
A. It is an exact duplicate.
Q. And the statement that you have prepared shows every fact that the train books would show?
A. Yes sir.
Q. I mean the conductors' train books?
A. Yes sir.

Plaintiffs' counsel offers in evidence the paper referred to which is marked Exhibit I and hereto attached.
Defendant's counsel object to same as irrelevant and immaterial.

Q. I will ask you to examine Exhibit I and state whether or not it was prepared in your department and under your direction?
A. It was, yes sir.
Q. Are all of the figures and all of the data with reference to trains run on the Madison line set forth in that statement correct?
A. Yes sir.
Q. The totals that are represented there are made up, of course, from the wheel reports that are sent in from that line?
A. Yes sir.
Q. Now I will ask you to explain the first item so that we will have a full understanding of the meaning of this report?
284 A. Train 181, Butler to Madison, distance 108 miles, consists of one caboose, 108 miles eight loaded cars 378 miles, and seven empty cars, 219 miles.
Q. What is meant by the 378 miles for those eight loads?
A. The distance travelled by the eight cars.
Q. On that line?
A. Yes sir.

Q. That is the total distance traveled by those eight cars on that line?

A. Yes sir.

Q. One car might have been full for 25 miles and one full the whole length of that line?

A. Yes sir.

By the REFEREE:

Q. That is 378 miles for one car?

A. No, for eight cars.

By Mr. TAYLOR:

Q. That item and item No. 1 of eight cars for 378 miles means that a train of eight cars was pulled 378 miles, does it?

A. No sir, eight loaded cars made 378 miles, that is the total miles for the eight cars, one may have gone 108 miles, one 25, one 15 and one 7, that is the different distances, but the total cars made 378 miles.

By Mr. DOSTER:

Q. That is the equivalent of one car for 378 *cars?*

A. Yes sir.

By Mr. TAYLOR:

Q. I notice in the second item of May 1st, 1903, that this statement is made, Train 184, Madison to Le Roy, 29 miles, and the next item is train 182, Le Roy to Butler, does that mean two trains?

A. Yes sir.

Q. But the same train crew runs them?

A. The two trains covered the same territory that Train 184 covers between Monteith Junction and Madison.

Q. What becomes of the train crew that runs from Madison to Le Roy?

A. I couldn't say.

285 Q. Is that diverted onto some other line?

A. I couldn't say.

Q. And a new train started from Le Roy?

A. I don't know about that.

Q. I will ask you if Exhibit I, which is made up from your wheel reports for the first fifteen days of May and October of the years 1903, 1904 and 1905, and for May, 1906, shows a fair average of the business done by the Madison line in the way of trains and cars hauled?

A. Yes sir, but now we are taking a spring month and also a fall month which are, as a rule, two very heavy months in that section of territory.

Q. Would that not be average months for the year's business?

A. I should say they would, yes sir.

W. H. MALCOLM, sworn for plaintiffs, testifies as follows:

Direct examination by Mr. TAYLOR:

Q. What is your name?

A. W. H. Malcolm.

Q. What position do you hold with the Missouri Pacific Railway Company?

A. I am chief clerk of the inner freight accounts department.

Q. I wish you would explain the duties that you have to perform in your department?

A. We up there are charged with the duty of apportioning to all lines and interests the revenue accruing on through way-bills, for instance, way-bills from Chicago on the C. & A. to a point in Kansas on the Missouri Pacific the way-bill carries through in one amount the freight from Chicago to destination and it is my duty to divide that between the C. & A. and the Missouri Pacific and pay the C. & A. their proportion of it.

Q. Is there any code of rules in use by the railroad companies of this section of the United States with reference to division of earnings?

A. Division of earnings, well, I think not.

286 Q. What rule do you apply?

A. We are governed entirely by publications of the traffic department, they issue the tariffs, and issue division sheets to each tariff, the traffic department, we are governed entirely by their issues.

Q. Who determines what division should be made?

A. The traffic department agree among themselves as to division of the rates.

Q. Are there not some well known rules that are applied?

A. Well, I think as a general thing there are a good many things that enter into a division of rates, and the same conditions that would enter into the making of rates in different territories, for instance, in a densely populated country where the business is heavy and the density of traffic is greater than in a sparsely populated country the lines would receive less for the same mileage in that territory than they would in a sparsely settled country, for instance, we would receive comparatively less from New York to East St. Louis than the lines would receive from East St. Louis west for the same mileage; in other words, the divisions of rates are made on a basis that will compare in a general way with the local rates obtaining in the territories covered, the local rate from New York to St. Louis first class I think is 87 cents, to East St. Louis.

Q. Do you apply a minimum mileage in ascertaining the division of profits that some independent line may be entitled to that delivers freight to your line?

A. No, we don't, the divisions are named for us.

Q. Suppose the Wabash brings a car 100 miles and delivers it to your system and you carry it to a station down here ten miles distant, you having ten miles of mileage to 100 miles of mileage for the

Wabash, to what division of the profits would your road be entitled, according to the rule which obtains in your department?

287 A. Well, to answer that specifically I would have to take—I mean to answer a hypothetical question I would have to take two points, and if there is a through tariff between those two points I will have a division sheet for that tariff which shows how much the Missouri Pacific will receive and how much the Wabash will receive.

Q. Now, you ought to know something about this proposition, would you be entitled to actual mileage?

A. No, we would receive more than actual mileage.

Q. What would you receive?

A. As a general thing 100 miles for the Wabash as against ten miles for us, I should say we would receive possibly twenty per cent. of the through revenue, that is to say our local rate for ten miles would possibly be twenty to 25 per cent. of what the Wabash local rate would be for the 100 miles.

Q. Now suppose we reverse the proposition and you carry freight 100 miles and deliver it to the Wabash and it carries it, say, 25 miles?

A. Practically the same rule would apply.

Q. You would not figure the division on the actual mileage of the Wabash in proportion to your mileage?

A. Not necessarily. Those divisions, as I said before, would be, in a general way, predicated on the rates that would obtain over the Wabash for 25 miles as against the rates that would obtain over our line for 100 miles, the through freight might be less than the sum of the two rates, but in dividing that through rate they would in a general way use those two proportions as factors.

Q. Do you know of any such department as yours which makes divisions upon actual mileage?

A. No sir.

Q. The actual mileage percentage, in order to find what divisions of profits a road might be entitled to, is not adopted, or given force, or used by any line?

288 A. Yes, it is; take our own system's lines, as I understand it they have a sort of actual mileage basis. I am not familiar with it, but in a general way I understand that between the properties the divisions are on mileage subject to certain minimum mileages.

Q. I am not speaking now about the division of profits between railroads belonging to your own family, but I am asking about independent lines, you don't know of any instance where independent lines ascertain a division of profits upon an actual mileage basis?

A. I don't know of any.

Q. Now, then, what is the maximum mileage minimum that is used in ascertaining what the division of profits would be?

A. I cannot answer that, either.

Q. Have you not had a great deal of experience in figuring up the division of profits from earnings?

A. I have had a good deal of experience but my experience has

not been such as to keep me posted as to the mileage that they use, in fact I don't understand that they use mileage altogether.

Q. What do you understand?

A. As I said a while ago my understanding is with independent roads the divisions in a general way are predicated on the rates and the density of traffic.

Q. In some cases some roads would get almost as high as fifty per cent. of the earnings, wouldn't they?

A. For what?

Q. For their share of the haul, no matter what the distance would be?

A. That would be the case, I suppose, in some cases.

Q. But in no case would it run down and be figured on an actual mileage?

A. Well, I don't know that it would not be done that way, but I don't know of any case where it is done that way, I don't know of any reason why it should not be.

Q. You think the chief factor which governs is the density of traffic rather than mileage?

289 A. The general conditions surrounding the operation of the road.

Q. And a railroad in a sparsely settled country is entitled to a larger division of earnings than a railroad in a densely populated district?

A. Well, I say that is my belief as to the way the rates are divided in a general way between independent lines.

Q. You have arrived at that belief from the experience that you have had in your own department?

A. Yes sir.

This is all the evidence introduced by plaintiffs.

290 *Defendant's Testimony in Rebuttal.*

JOHN M. ST. CLAIR, sworn for defendant, testifies as follows:

Direct examination by Mr. DOSTER:

Q. What is your name, residence and occupation?

A. John M. St. Clair, Jennings, St. Louis County, Mo., clerk in charge of earnings department, Missouri Pacific.

Q. In charge of freight earnings or freight and passenger both?

A. Freight earnings only.

Q. Do you know of a branch of the Missouri Pacific System called the Madison branch?

A. The Madison line, yes sir.

Q. Is that line within your jurisdiction?

A. Yes sir, so far as making a division of the earnings is concerned.

Q. What are your special duties?

A. Making a division of the freight earnings.

Q. Between what?

A. Between the different lines in the system.

Q. That, of course, can only be done where a shipment runs over two or more lines of the system?

A. Yes sir, otherwise it would be local.

Q. And in such a case as that your business is to make the proper distribution of the earnings?

A. Yes sir.

Q. In doing that what system or rule is employed by the Missouri Pacific Company?

A. The divisions are made on a mileage basis giving to each road its proportion according to the percentage of haul that it made.

Q. Do you know Mr. Nugent of the Missouri Pacific?

A. Yes sir.

Q. His title is statistician?

A. Yes sir.

Q. Mr. Nugent testified in this case same three weeks ago giving us some figures as to the earnings of the company and of the Madison Branch line in particular; did you furnish him any
291 of the figures used by him as a witness?

A. Yes sir, I furnished him the percentages for the Madison line in Kansas upon which the division was made.

Q. Has the mileage percentage basis for division of earnings been long used on the Missouri Pacific System?

A. Yes sir.

Q. For how long?

A. 21 years to my knowledge.

Cross-examination by Mr. TAYLOR:

Q. Did you make a division of earnings between the different roads embracing the Missouri Pacific System?

A. Yes sir.

Q. Why did you do that?

A. To find the earnings, what the earnings of each property are.

Q. The Missouri Pacific System embraces a large number of lines and branch lines, doesn't it?

A. Yes sir.

Q. And is known in the United States as one system, isn't it?

A. The Missouri Pacific, yes sir.

Q. Do you mean to say that where you have a branch line 100 miles long which originates a great deal of traffic, and that traffic is given to other lines embraced in the Missouri Pacific system that you always make a division between the lines which do the hauling?

A. Yes sir.

Q. Why do you do that?

A. So that we are able to tell what the earnings of each property or each division in the system are.

Q. The Missouri Pacific Railway Company has a certain amount of capital stock, hasn't it?

A. That I could not answer.

Q. And these earnings are applied, I mean the net earnings, in giving dividends on the capital stock of the Missouri Pacific?

A. I couldn't say, that does not come within my province.

Q. Do you know anything about the separate companies or corporations embracing the Missouri Pacific System?

A. As to the conditions of the corporations?

Q. I mean about the separate companies, the corporations
292 embracing the Missouri Pacific System, do you know that there are such companies?

A. I simply act upon advice from my superior and make divisions according to the properties, as to the particulars of the organization I know nothing.

Q. From the character of your business do you know how many companies there are constituting what is known as the Missouri Pacific Railway Co. proper?

A. Yes sir.

Q. How many are there?

A. I know how many divisions are made as to these properties.

Q. How many?

A. I don't think I could answer that question, either.

Q. Well, approximately?

A. From the simple fact that I keep these divisions separate and there are certain divisions that may be Missouri Pacific and may not be, I simply keep the different divisions separate, the earnings of them, I do not keep them separate on the ground exactly that they are different organizations or properties, but simply that I am instructed to do so; so far as I know they may want to know what that line is earning in the operation of that line, so that I could not say what relation one line has to another, or anything about the conditions of the corporation, or as to its being a part of a certain corporate line, or whether it is or not, that I couldn't say.

Q. But you do know that they are divided up and carried on the books as separate divisions or corporations?

A. No sir, I couldn't say what they are carried on the books as as I am not a bookkeeper and not connected with the books in any way, I simply make a division of these earnings of the different lines as instructed by the general auditor.

Q. You stated a moment ago you made a division of earnings for the Madison line?

293 A. Yes sir, I made a division of earnings for the Madison line.

Q. Do you make a division of earnings for the Kansas & Colorado Pacific Railway Co.?

A. Yes sir, we do, and this Madison line forms a part of the present Kansas & Colorado Pacific road in our regular division of earnings.

Q. There are eleven other companies constituting the Kansas & Colorado Pacific Railway Co., do you segregate each one of those?

A. No sir, as a general thing we keep the whole Kansas & Colorado Pacific separate, what is known as the Kansas & Colorado Pacific as one.

Q. How are you going to explain the reason why you have kept

the Madison line out of those twelve lines which constitute the Kansas & Colorado Pacific separate from the others?

A. Why I have kept them separate?

Q. Why have you made a division of earnings with the Madison line and have not made a division as to each of the other lines constituting the Kansas & Colorado Pacific?

A. I have not as a regular thing. I do not always keep the Madison line separate, I simply compiled this in this case.

Q. If you had a 50 mile line in some other section of the country operated by the Missouri Pacific Railway Co. proper, but existing as a separate corporation, we will say, and under your rule of division of profits you were to figure up the proportion of earnings due to that line it would show that the road was not profitable in any event, wouldn't it?

A. That I couldn't say.

Q. Well, we will say that a 50 mile haul, or a fraction of a 50 mile haul on that kind of a branch, in almost every case, the destination being to some point perhaps some distant point, some large market, such as St. Louis, upon the Missouri Pacific System, would naturally give that road a very small division of earnings,
294 wouldn't it?

A. It would just give them the proportion of the haul, certainly if a road hauled a thing 100 miles and another road hauled it 1500 miles we would give the 100 mile haul a small proportion.

Q. Don't you know as a man versed in railroading that that kind of system would bankrupt any branch?

A. I do not, no sir.

Q. That kind of division of profits, and of business, wouldn't that bankrupt any other line or branch?

A. Not that I know of.

Q. What is that?

A. I am not prepared to say that it would.

Q. And you wouldn't be prepared to say that it would not?

A. No sir, because as I stated at first, I don't know.

Q. If it were an independent line the division of profits would not be made on the same basis, would it?

A. If it was an independent line it would not be made on what basis?

Q. The percentage of division that you apply to the companies constituting the Missouri Pacific Railway Co. proper?

A. Yes sir, on the basis that we divide the Missouri Pacific Railway property and when making that we would make it on that very basis on which you state.

Q. Are there any other independent lines that give you traffic on that basis?

A. That I would not be prepared to say because I do not handle independent lines, I handle system lines.

Q. Who figures up the divisions of freight earnings—I mean in this office, who figures up in your office the division of freight due to other independent lines?

A. The department known as joint accounts.

Q. Who is chief of that department?

A. W. H. Malcolm is in charge of it.

Q. And you don't know whether they apply your percentage of divisions in that department or not with reference to the
295 business of independent lines which is transferred to your line?

A. No sir, I am not versant in that department, familiar with that department.

Q. In furnishing the percentages to Mr. Nugent in order to enable him to prepare the table referred to by Judge Doster you made no statement to him that the Madison line would be given in each case a minimum mileage of 50 miles in figuring its proportion of earnings, did you?

A. No sir, it was not allowed a 50 mile minimum.

Q. It should have been allowed a 50 mile minimum, should it not?

A. Well, I don't think so, to get at the actual earning power of the line.

Q. One of the witnesses stated that a 50 mile minimum would be allowed in all cases; now can you explain why it was not allowed with the Madison line in the making up of that table?

A. Well, those percentages were compiled with the object of arriving at the actual earning power of that line in the State of Kansas; now, in arriving at that, we use an absolutely actual mileage basis for that line as we did also for all other lines, we did that because we believed that was the actual earnings of that line.

Q. Do you mean to say that you do not apply the 50 mile minimum rule to other branch lines of the Missouri Pacific in figuring up the division of earnings to which you might be entitled?

A. No sir, I do not mean to say anything of the kind, I mean to say we do.

Q. Why did you make the exception with reference to the Madison line?

A. I made the exception because I believed you wanted the absolutely actual earnings of that line on its actual haul against all other hauls.

Q. When you made that exception you knew that the Mad-
296 ison line would not be credited with the proportion of earnings to which it would be entitled under the rule which you applied to other branch lines?

A. Well, but this forms part of the K. & C. P.

Q. That don't answer my question. I said when you applied that actual percentage basis which you used in determining the division of profits due to the Madison line you knew at the time that that was not the rule you used in ascertaining the division of profits to which any branch might be entitled belonging to the Missouri Pacific Railway, didn't you?

A. I knew that it was not the rule we used in dividing all of the properties, yes, between all the properties, but if my superior officer was to ask me for a certain tonnage of a line I would go to work and

should not ask him any questions—I should go to work and figure it, if he wanted to know what proportion of that Madison line earned of the K. & C. P. business, I should immediately go to work and without asking him any question and divide it on an actual mileage basis.

Q. Did they order you to prepare this table on an actual mileage basis?

A. I didn't receive any instructions, they simply asked me to prepare these percentages and apply them.

Q. Why did you depart from the rule and abolish the 50 mile minimum in this case?

A. If there had been a request sent in to me from one of the departments to know what the earning power of the K. & C. P. was from Kanopolis up between—that would not be a fair case, if they wanted to know the earnings of the Missouri Pacific line between Geary and Yates Center, if they wanted figures in regard to it from Coffeyville to Chetopa I should not ask any questions, I should simply divide the earnings on that line on an actual mileage basis.

Q. Did you get any instructions from any officer of the Missouri Pacific to figure up the earnings of the Madison Branch on an
297 actual mileage basis?

A. Not that I know of, there may have been instructions but I did not see them, they were sent down to me to apply the division, and I did it.

Q. Anyhow you made up the division without reference to the 50 mile minimum?

A. Yes sir.

Q. And in doing that it made a material difference in the profits to which that line would be entitled?

A. Well, it may have made it and it may not have, in many cases it would be favorable to it.

By Mr. DOSTER:

Q. What would be favorable?

A. The actual mileage in many cases would be favorable to it; for instance, we have a great deal of stuff local to that line to Butler, we have a few miles in between Butler and the State line, in those few miles it would be against their actual mileage and especially up to Madison. Then another thing, lots of the business, a great deal of that business is done from the Missouri River and going to Madison, in that case it would not be very unfavorable to the Madison branch line, the road is more than 50 miles long, and probably a good part of it is.

By Mr. TAYLOR:

Q. The 50 mile minimum would be applied on the in stuff as well as the out stuff?

A. Yes sir, everything in and out they would divide on the same basis, I couldn't divide in stuff on one basis and out on another.

Q. Is the 50 mile minimum applied on the in business from other lines?

A. Other lines?
Q. Yes.
A. Yes sir.
Q. Suppose the Wabash Railroad turned over to you a carload of stuff to be hauled only ten miles on your Missouri Pacific System are you entitled to a 50 mile haul?
298 A. I don't handle that.
Q. Don't you know something about it?
A. No sir, I don't know the divisions—we have divisions with the Wabash Railway, but I couldn't tell you what they are, that comes under joint accounts.
Q. When you say that you don't know that the result would be very much different if the 50 mile minimum had been applied in making up the division of earnings due the Madison line your answer is based wholly on speculation, isn't it?
A. Yes sir.
Q. And you are not prepared to say of your own knowledge whether or not there would be a material difference if the 50 mile minimum had been applied?
A. No sir, I couldn't say whether it would be material or not, unless I worked it both ways.

By the REFEREE:

Q. I wish you would state, Mr. St. Clair, in detail just what you took as your starting point, and how you figured to ascertain the proper division of freight earnings to be given to the Madison line?
A. We applied the mileage to the Kansas State line at the junction of the road to the junction with the Madison line in Kansas, we allowed to the Madison line their actual mileage, and to all other hauls outside of that actual mileage we combined the actual haul off of the Madison State line against the actual haul on the Madison State line, and compiled per cents on that basis and applied them.

By Mr. TAYLOR:

Q. I understand that the accounts that you have in your office show the aggregate earnings of the Kansas & Colorado line on the total mileage of those lines?
A. Yes sir.
Q. Now, did you have any account showing the total earnings of the Madison line from Madison to Butler, or did you get at
299 that by proportioning it according to the mileage of the Madison line as compared with the mileage of the Kansas & Colorado Pacific?
A. No sir, the mileage of the Madison line against all mileage other than the Madison line.
Q. You mean the Kansas & Colorado Pacific line?
A. No, of all mileage in the system.
Q. Then you took the earnings of the entire system and gave to the Madison line the percentage of that which the mileage of the Madison line bore to the total mileage of the system?
A. Yes sir.

Redirect Examination by Mr. DOSTER:

Q. Do you know between what points most of the freight shipments running in part over the Madison Branch, were?

A. The principal part of the business is from the Missouri River to Butler, but from the Missouri River, either originating at the Missouri River, or transferred at the Missouri River to our company by other roads, and also at St. Louis.

Q. Most of the stock shipments are to Kansas City, are they not?

A. Yes sir, to the Missouri River.

Q. Most of the grain shipments are to Kansas City, are they not?

A. I believe so.

Q. And most of the hay shipments, if there are any?

A. Yes sir, I believe that is correct, most of the hay goes to the Missouri River.

Q. Well, live stock, grain and hay are about all that is shipped off the Madison line, isn't it?

A. I should judge they are the principal things.

Q. Do you know the distance between Butler, Missouri, and Kansas City?

300 A. I couldn't say what the exact distance is now, no sir, I could tell you by referring to our records, though, our mileage book.

Q. Which is longer, from Butler to Kansas City or from Butler to Madison?

A. I cannot answer that either, I think, though, it is some small distance farther from Butler to Kansas City, but I am not prepared to say that.

Q. Have you any knowledge as to where most of the in-shipments originate?

A. Most of the shipments on that line?

Q. Yes, do they originate at Kansas City and St. Louis and other points?

A. You mean business for that line?

Q. Yes?

A. I should judge most of the business originated at Missouri River points, or beyond, or St. Louis and beyond.

Q. Now which, if you have any judgment?

A. My judgment would be that it was Kansas City. In regard to the distance you asked about a little while ago, I find the distance from Kansas City to Butler is 73 miles, and from Butler to Madison it is 109 miles.

301 M. L. BYERS, sworn for the defendant, testifies as follows:

Direct Examination by Mr. DOSTER:

Q. What official position with the Missouri Pacific Company do you hold?

A. Chief Engineer Maintenance of Way.

Q. How long have you been in the engineering department of the Missouri Pacific Company?

A. A little over a year and a half.

Q. How long have you had experience as civil engineer with railway companies?

A. About eight or ten years.

Q. Are you acquainted with the branch of the Missouri Pacific System out in Kansas and Missouri, principally in Kansas, called the Madison Branch?

A. I was over it about one or two months ago.

Q. The auditing department of the Missouri Pacific Company has charged against that branch during the two years and a half beginning January 1st, 1903, and ending June 30th, 1905, $2563, for maintenance and improvements in the way of steel rails, and, during the same period of *them*, $52,256.83 in the way of cross ties; I will get you to state from your knowledge as an engineer of maintenance whether that is about the normal cost of those repairs?

A. I should say that is very close to the normal, that it is, if anything, rather slightly under the normal.

Q. So, therefore, the figures given there are not exceptional?

A. The figures here are as close to the normal as one would ordinarily expect to find them.

Q. Do you know whether the Madison branch is ballasted, and, if so, how well ballasted it is?

A. It is not very well ballasted.

Q. Do you know whether the life of a tie is longer or shorter on a ballasted roadbed, and, if so, which is the longer?

A. The life of a tie on a dirt track is probably from ten to thirty per cent. shorter than on a well ballasted track.

302 Q. How is the life of the tie on that Madison Branch as compared with the life of a tie on a well ballasted track?

A. It would be shorter.

Q. About in the proportion you have named?

A. About in the proportion I have named.

Cross-examination by Mr. Taylor:

Q. What is the life of a tie?

A. It depends on the character of the timber that is used.

Q. What kind of ties are used on the Madison line?

A. Principally oak.

Q. And what is the life of an oak tie in the character of soil along the Madison line?

A. The life of a white oak tie would be about in the vicinity of eight years, that would be a general average.

Q. What kind of ties were used on the Madison line in renewing?

A. Judging from what I learned in my trip over the line, and it was made for the purpose of inspecting the line, it was probably white oak.

Q. What is a white oak tie worth?

A. It depends on a great many conditions, it involves the original cost of the tie, the cost of the haul, and cost of handling.

Q. You mean, of course, the cost of a tie when it is loaded on the cars to send?

A. Not necessarily.

Q. Free on board the cars?

A. Not necessarily, it depends on the use you wish to make of the figures as to what you would figure the cost.

Q. I don't care for the figures, I want to know what a white oak tie is worth stacked up after it is cut?

A. That would depend on where you secure the tie.

Q. There are different prices in different parts of the United States, are there?

A. Yes sir.

303 Q. There are lots of ties cut down here in Arkansas, are there not?

A. I judge there are a great many cut.

Q. What are ties worth down there?

A. They would vary from twenty to forty cents a tie.

Q. Do you know what these ties cost that are mentioned in that exhibit?

A. I don't know exactly where the ties came from, but I know about the average cost of the ties which we use.

Q. What is the average cost?

A. An average cost on the track would be about 45 cents, that is unloaded—for instance, in this case, unloaded on the Madison branch.

Q. How many ties are there to a mile on the Madison Branch approximately?

A. Approximately they would run about 18 ties to a thirty foot rail, that would figure out about 3400 ties to the mile.

Q. Isn't that an extraordinary number to use?

A. That is an average number, in some of our lines they will run as high as 22 ties to the 30 foot rail in some places.

Q. I had an idea that 2200 ties to the mile was an excessive number?

A. I don't think we have any miles except by accident that have any where near so small a number.

Q. You think that the average number used in common railroad construction is about 3400?

A. 18 ties to the rail has become almost standard practice in tie renewals.

Q. What condition did you find that roadbed in, it is in fairly good condition, isn't it?

A. It is in fair condition for the class of traffic that is being handled over it.

Q. They use light engines?

A. Yes.

Q. And light rolling stock?

A. They use the same rolling stock that is used all over the system.

Q. Are there many bridges on that line?

A. There are a number of bridges, I don't recall the situ-

304 ation in that particular.

Q. Did you examine the bridges, also?

A. Only in a very casual way, I was more interested in the track conditions because they are the conditions that usually require the closest attention.

Q. Were the bridges, so far as you have investigated, in fair condition?

A. So far as my knowledge goes all the bridges on that line are in fair condition, but that is speaking only with very general information in regard to them.

Q. You did not superintend the putting in of these new ties, did you?

A. No sir.

Q. Do you know who did?

A. Directly the roadmaster would have charge of that work, but I was not there to see that he superintended it, of course.

Q. There was no special gang sent over there to put those ties in, was there?

A. I cannot answer that question, I think not, but I do not positively know; the usual practice in tieing roads is to slightly increase the different gangs located along the road, but in some cases where the renewal is abnormal an extra gang is sent to do the work.

Q. In answering Judge Doster that Exhibit A. shows the normal expenditure within the time covered by the exhibit for cross ties, did you mean to say that on a road approximately 108 miles long $52,256.83 worth of ties would be used in two years and a half?

A. What I meant by normal was that if you took a term used in the maintenance of this particular line and took the total cost of maintenance during that term of years it would average, for two and a half year periods, slightly higher than these figures show.

Q. And from your knowledge and experience you think, then, that that shows an actual, legitimate expense for ties for
305 & 306 the length of time covered by the exhibit?

A. For the sum of the two items the figure represents about a normal expenditure; the expenditure for one item is a little bit high and for the other a little bit low, but the total is normal.

Q. Speaking of items you mean for cross ties it is high?

A. Yes sir.

Q. And for rails it is a little low?

A. It is a little bit lower than the cross ties are high.

Q. About how much too high are those cross ties?

A. The cross ties, I would say, for a period of years, would run about $50,000 instead of $52,300 for a period of two and a half years.

Q. That is on 108 miles of road?

A. Yes sir, whereas the charge for rails would probably run about $8,000.

* * * * * * *

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EXHIBIT B.

The Missouri Pacific Railway Company,
St. Louis, Iron Mountain & Southern Railway Co.
and
Leased, Operated and Independent Lines.

Accounting Department.

ST. LOUIS, MO.

S. B. Schuyler, General Auditor.
E. M. Curtis, Ass't Gen'l Auditor.
J. S. Tustin, Frt. Claim Agent.
E. H. Lycett, Auditor Disbursements.
W. Q. Morcom, Auditor Freight Receipts.
H. H. McIntire, Auditor of Passenger Receipts.

In reply refer to
File No. —.
Date ——.

Approximate Statement of Cost Per Train Mile for the System for Year 1905.

	Freight.	Passenger.	Total.
Expense	$21,364,882.22	9,769,059.01	31,133,941.23
Train Mileage	13,192,859.	9,917,950	23,110,809
Average Cost in cents	161.94	98.50	134.72

* * * * * * *

	Conductors.	Brakemen and porters.	Baggage-men.	Heating and lighting cars.	Oiling cars.	Cleaning cars.	Total.
January 1903	$110.71	68.92	23.32	10.96	4.00	9.08	226.99
February "	117.59	64.02	23.32	8.72	3.06	6.46	223.17
March "	110.99	64.58	23.32	10.98	4.10	8.55	222.52
April "	141.84	64.70	23.32	6.57	3.32	8.03	247.78
May "	130.58	68.22	23.32	7.05	3.66	8.48	241.31
June "	130.47	68.21	25.65	3.10	2.84	6.99	237.26
July "	197.69	84.21	23.32	3.94	4.41	8.10	321.67
August "	130.58	68.21	23.32	3.34	4.13	9.82	239.40
September "	130.58	68.21	23.32	9.55	4.49	12.30	248.44
October "	138.32	68.20	23.32	5.57	4.18	9.31	248.90
November "	130.58	68.21	27.98	8.69	4.90	9.23	249.50
December "	136.60	72.28	27.98	18.80	4.61	9.30	269.57
January 1904	130.58	73.01	27.93	20.55	6.34	14.29	272.70
February "	143.81	68.21	27.98	19.44	6.94	16.01	282.39
March "	142.32	45.71	27.98	20.54	8.60	16.76	261.91
April "	175.31	72.42	27.98	21.24	9.76	17.57	324.28
May "	137.22	76.20	27.98	23.49	13.13	26.99	305.01
June "	137.48	72.10	27.98	12.86	8.61	19.04	278.07
July "	159.25	106.34	31.15	6.16	6.96	14.84	323.80
August "	130.59	73.91	27.98	7.39	5.68	15.21	260.76
September "	142.61	71.40	27.98	7.50	7.65	16.18	273.32
October "	156.64	70.91	27.98	15.35	7.82	18.75	297.45
November "	147.27	73.15	27.98	16.42	7.95	16.87	289.64
December "	137.47	72.61	27.98	18.39	5.32	14.15	275.92
January 1905	111.36	72.04	27.98	23.16	9.19	16.95	260.68
February "	101.49	72.16	27.98	22.79	8.79	19.04	252.25
March "	139.61	76.72	27.98	13.99	7.04	16.26	281.60
April "	142.48	68.82	33.80	15.13	9.08	17.72	287.03
May "	2.46	2.85	27.98	8.99	9.31	17.02	68.61
June "	105.52	137.39	55.96	2.95	4.20	7.93	313.95
Total	3,950.00	2,133.92	832.05	373.51	189.17	407.23	7,885.88

EXHIBIT G.—*Statement of Passenger Engine Service, Monteith Jct. to Madison, Kans., January 1st, 1903, to June 30th, 1905.*

	Enginemen and firemen.	Round-house men.	Fuel for locomotives.	Water for locomotives.	Oil for locomotives.	Other supplies for locomotives.	Total.
January 1903	$524.14	27.90	233.92	44.65	15.94	2.11	848.66
February "	336.96	27.07	183.10	43.70	14.36	1.72	606.91
March "	420.50	31.26	234.64	62.10	13.94	1.84	764.28
April "	373.20	28.00	291.66	47.59	13.98	3.00	757.43
May "	432.08	28.25	400.49	47.50	12.87	2.13	923.32
June "	442.85	32.25	372.50	47.50	13.60	3.00	911.70
July "	414.00	92.90	266 98	50.25	15.52	3.00	842.65
August "	426.81	33.65	307.05	47 50	11.49	3.94	830.44
September "	395.30	31.90	355.47	11.00	17.23	3.40	814.30
October "	408.98	31.30	515.30	82.32	15.85	2.57	1,056.32
November "	401.43	29.50	396 63	48.50	16.20	2.68	894.94
December "	412.05	37.16	404.64	49.78	14.25	3.12	921.00
January 1904	417.93	38.83	392.65	45.60	16.00	2.64	913.65
February "	409.80	39.83	331.23	65.78	16 50	3.00	866.14
March "	433.80	33.15	313.73	47.50	17.43	3 00	848.61
April "	421.10	28 47	480.71	44.77	19.40	2.82	997.27
May "	453.95	40.22	457.08	47.59	19.60	3.00	1,021.44
June "	463 70	39 38	316.38	42.02	18.84	2.75	883.07
July "	483.10	39.59	372.71	49.45	21.28	3.25	969.38
August "	415.85	40.64	368.23	45 57	21.26	3.67	895.22
September "	432.10	72.00	272.45	44.65	15.09	6.25	840.54
October "	438.80	54.00	318.24	46.55	12.79	4.52	874.90
November "	440 30	72.75	308.72	47.54	18.94	9.73	867.98
December "	451.30	78.75	335.12	46.67	18.81	4.82	935.47
January 1905	238.92	76.50	355.09	48.85	20.88	6.15	746.39
February "	338.96	64.50	328.13	52.26	16.16	2.33	802.28
March "	433.65	74.25	282.82	83.12	15.30	2.62	891.76
April "	419.20	56.25	240.76	48 36	22.37	8.06	795.00
May "	546.55	48.93	40.03	5.78	.....	3.11	643.40
June "	105.65	60.30	129.40	57.96	.....	.79	354.10
Grand total	12,301.90	1,389.48	9,605.86	1,452.41	463.88	105.02	25,318.55

314 EXHIBIT G.

Statement of Freight Train Service Monteith Jct. to Madison, Kans., January 1st, 1903, to June 30th, 1905.

		Conductors.	Brakemen.	Heating and lighting.	Oiling cars.	Total.
January	1903....	$161.64	224.36	1.16	11.09	398.25
February	"	262.61	270.09	.89	7.79	541.38
March	"	218.91	312.77	.95	10.06	542.69
April	"	211.16	240.54	.88	10.57	463.15
May	"	225.34	319.69	.79	9.21	555.03
June	"	212.14	304.18	.68	9.10	526.10
July	"	230.98	360.50	.73	9.33	601.54
August	"	246.89	355.15	1.23	13.05	616.32
September	"	256.58	371.97	1.31	10.60	640.46
October	"	250.59	357.68	1.48	10.55	620.30
November	"	241.81	256.45	2.56	14.92	515.74
December	"	250.98	330.34	2.20	13.88	597.40
January	1904....	254.97	421.13	1.65	12.69	690.44
February	"	229.44	322.04	1.58	12.54	565.60
March	"	221.99	321.73	1.06	12.18	556.96
April	"	235.74	329.21	.80	10.97	576.72
May	"	280.41	309.16	.85	11.83	602.25
June	"	245.10	414.87	.85	10.43	671.25
July	"	239.10	347.88	.45	8.65	596.08
August	"	245.58	352.52	.34	6.00	604.44
September	"	281.17	428.42	.78	7.88	718.25
October	"	158.05	366.65	1.28	10.29	536.27
November	"	234.29	339.06	1.10	10.13	584.58
December	"	222.08	322.26	.72	6.86	551.92
January	1905....	306.30	426.79	1.43	9.12	743.64
February	"	328.91	412.54	1.77	9.76	752.98
March	"	241.57	315.75	.97	10.06	568.35
April	"	168.41	322.10	.55	12.71	503.77
May	"	220.63	312.88	.98	11.71	546.20
June	"	115.19	191.40	.88	7.55	315.02
Grand total..		$6,998.56	9,960.11	32.90	311.51	17,303.08

EXHIBIT G.—*Statement of Freight Engine Service, Monteith Jct. to Madison, Kans., January 1st, 1903, to June 30th, 1905.*

	Engineers and firemen.	Round-house men.	Fuel for locomotives.	Water for locomotives.	Oil, etc., for locomotives.	Other supplies for locomotives.	Total.
January 1903	$533.19	55.80	509.86	50.35	21.19	2.39	1,172.78
February "	480.60	54.13	442.34	51.30	25 29	2.03	1,055.69
March "	515.95	62.54	456.89	64.63	23.43	1.91	1,125.35
April "	490.75	56.00	355.09	47.59	20.65	3.00	973.08
May "	468.65	56.40	727.15	47.50	21.56	2.12	1,323.38
June "	522.45	64 50	592.98	47.50	26 67	3.00	1,257.10
July "	469.90	145.55	255.85	50.25	19.75	3.00	924.30
August "	489.40	67.30	338.92	47.50	27 43	3.94	984.49
September "	551.25	63.80	262.55	11.00	27.10	3.40	919.10
October "	590.45	62.60	613.13	85.68	19.40	2.68	1,373.94
November "	375.43	59.00	653 66	46.59	18.75	2.57	1,156.00
December "	649.60	74.34	703.09	45.96	18.95	2.88	1,494.82
January 1904	565.00	77.67	663.34	49.40	20.25	2.86	1,378.52
February "	577.58	79,67	358.71	65.79	22.13	3.00	1,106.88
March "	557.48	85.60	319.83	47.50	24.76	3.00	1,038.17
April "	552.15	89.03	636.27	50.48	24.96	3.18	1,356 07
May "	666.79	92.73	666.51	47.59	24.78	3.00	1,501.40
June "	537.85	91.98	547.79	53.49	26.16	3.50	1,260.77
July "	536.95	98.98	687.76	45.64	38.22	3.00	1,410.55
August "	594.40	105.26	698.15	49.37	39.36	3.98	1,490.52
September "	603.15	72.00	496.22	50.35	16.78	7.05	1,245.55
October "	570.70	102.00	450 61	48.45	15.90	4.71	1,192.37
November "	579.05	72.75	492.28	47.55	21.10	9.74	1,222 47
December "	596.40	78.75	544.35	48.58	22.32	5.02	1,295.42
January 1905	481.00	76.50	511.29	48.86	17.51	6.15	1,141.31
February "	528.45	235.26	582 68	54.39	27.39	2.42	1,430.59
March "	594.70	74.25	574.38	83.13	22.49	2.63	1,351.58
April "	486.35	56.25	421.74	44.64	29.05	7.44	1,045.47
May "	514.95	99.00	487.14	16.47	21.80	8.86	1,148.22
June "	487.65	88.50	353.67	156.71	18.38	2.15	1,107.06
Grand Total	16,178.22	2,498.14	15,384.23	1,604.24	703 51	114.61	36,482.95

* * * * * * *

317 EXHIBIT I.

Consists of Trains Between Butler and Madison.

May 1st, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
8 Loads, 378 "
7 Empty, 219 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
5 Loads, 190 "
1 Empty, 15 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
8 Loads, 337 "
3 Empty, 169 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

May 2nd, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
15 Loads, 483 "
1 Empty, 39 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
4 Loads, 70 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
7 Loads, 342 "
3 Empty, 94 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

May 3rd, 1903.

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

318 Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

May 4th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
13 Loads, 509 "
6 Empty, 318 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
6 Loads, 115 "
2 Empty, 37 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
8 Loads, 339 "
5 Empty, 248 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

May 5th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
6 Loads, 285 miles
5 Empty, 212 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
2 Loads, 35 "
1 Empty, 25 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
6 Loads, 255 "
1 Empty, 61 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

May 6th, 1903.

Train 181, Butler to Madison—108 miles:

1 Baggage, 108 miles
19 Loads, 753 "
4 Empty, 89 "

319 Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
2 Loads, 58 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
9 Loads, 380 "
4 Empty, 209 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

May 7th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
9 Loads, 341 "
6 Empty, 266 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
4 Loads, 67 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
8 Loads, 237 "
21 Empty, 1569 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:
1 Baggage, 108 miles
1 Coach, 108 "

May 8th, 1903.

Train 181, Butler to Madison—108 miles:
1 Caboose, 108 miles
8 Loads, 401 "
6 Empty, 183 "

Train 184, Madison to Le Roy—29 miles:
1 Caboose, 29 miles
2 Loads, 58 "

Train 182, Le Roy to Butler—79 miles:
1 Caboose, 79 miles
12 Loads, 401 "
5 Empty, 320 "

Train 161, Butler to Madison—108 miles:
1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:
1 Baggage, 108 miles
1 Coach, 108 "

320 May 9th, 1903.

Train 181, Butler to Madison—108 miles:
1 Caboose, 108 miles
27 Loads, 841 "
7 Empty, 119 "

Train 184, Madison to Le Roy—29 miles:
1 Caboose, 29 miles
4 Loads, 87 "
1 Empty, 8 "

Train 182, Le Roy to Butler—79 miles:
1 Caboose, 79 miles
4 Loads, 199 "
1 Empty, 56 "

Train 161, Butler to Madison—108 miles:
1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:
1 Baggage, 108 miles
1 Coach, 108 "

May 10th, 1903.

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

May 11th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
8 Loads, 302 "
10 Empty, 652 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
11 Loads, 267 "

Train 181, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
12 Loads, 532 "
10 Empty, 232 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

321 May 12th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
11 Loads, 644 "
5 Empty, 94 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
4 Loads, 82 "
1 Empty, 8 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
6 Loads, 233 "
11 Empty, 781 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

May 13th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
9 Loads, 413 "
5 Empty, 62 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
4 Loads, 61 "
3 Empty, 65 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
5 Loads, 214 "
6 Empty, 212 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

May 14th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
17 Loads, 792 "
3 Empty, 47 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
2 Loads, 44 "
1 Empty, 18 "

322 Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
7 Loads, 243 "
6 Empty, 340 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

May 15th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
7 Loads, 382 "
1 Empty, 87 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
7 Loads, 110 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
8 Loads, 331 "
22 Empty, 1713 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

323 Consists of Trains Between Butler and Madison.

Oct. 1st, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
18 Loads, 823 "
14 Empty, 469 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
10 Loads, 416 miles
12 Empty, 426 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
2 Loads, 58 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 2nd, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
9 Loads, 420 "
7 Empty, 684 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
4 Loads, 83 "
3 Empty, 37 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
10 Loads, 382 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coal, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 3rd, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
13 Loads, 656 "
5 Empty, 50 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
17 Loads, 693 "
11 Empty, 612 "

324 Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 4th, 1903.

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 5th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
17 Loads, 911 "
10 Empty, 242 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
13 Loads, 377 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
16 Loads, 426 "
9 Empty, 390 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 6th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
8 Loads, 335 "
4 Empty, 144 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
3 Loads, 87 "
2 Empty, 35 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
12 Loads, 475 "
3 Empty, 70 "

325 Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 7th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
11 Loads, 501 "
10 Empty, 163 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
9 Loads, 312 "
5 Empty, 270 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 8th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles.
20 Loads, 976 "
3 Empty, 98 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
14 Loads, 515 "
4 Empty, 254 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 9th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
10 Loads, 567 "
17 Empty, 1676 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
2 Loads, 58 "
1 Empty, 6 "

326 Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 10th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
15 Loads, 760 "
3 Empty, 29 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
2 Loads, 58 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
15 Loads, 520 "
16 Empty, 441 "

Train Extra, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
10 Loads, 290 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 11th, 1903.

Train Extra, Butler to Colony—63 miles:

1 Caboose, 63 miles
10 Empty, 510 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 12th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
17 Loads, 758 "
15 Empty, 528 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
13 Loads, 483 "
4 Empty, 169 "

327 Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Oct. 13th, 1903.

Train 181, Butler to Madison 108 miles:

1 Caboose, 108 miles
10 Loads, 509 "
10 Empty, 130 "

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
2 Loads, 58 "
2 Empty, 28 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
13 Loads, 517 "
30 Empty, 693 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Oct. 14th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
22 Loads, 975 "
1 Empty, 31 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
9 Loads, 306 "
8 Empty, 164 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

328 Oct. 15th, 1903.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
22 Loads, 946 "
9 Empty, 377 "

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
10 Loads, 428 "
3 Empty, 91 "

Train 161, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

Train 160, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 "

329 May 1st, 1904.

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

May 2nd, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
15 Loads, 806 miles
3 Empty, 32 miles

Train 182, Le Roy to Butler—79 miles:

12 Loads, 486 miles
1 Empty, 23 miles

Train Extra, Le Roy to Crandall—5 miles:

1 Caboose, 5 miles
2 Loads, 10 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

May 3rd, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
18 Loads, 668 miles
13 Empty, 582 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
7 Loads, 136 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
14 Loads, 572 miles
2 Empty, 102 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

330 Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

May 4th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
6 Loads, 442 miles
2 Empty, 63 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
10 Loads, 140 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 29 miles
9 Loads, 296 miles

Train Extra, Le Roy to Butler—79 miles:

1 Caboose, 79 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

May 5th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
12 Loads, 513 miles
4 Empty, 104 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
7 Loads, 119 miles
4 Empty, 95 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
8 Loads, 415 miles
25 Empty, 1126 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

331 May 6th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
12 Loads, 685 miles
11 Empty, 716 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
4 Loads, 95 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
8 Loads, 270 miles
6 Empty, 228 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

May 7th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
15 Loads, 535 miles
8 Empty, 482 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
8 Loads, 124 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
10 Loads, 560 miles
11 Empty, 719 miles

Train Extra, Le Roy to Mound City—42 miles:

1 Caboose, 42 miles
3 Coaches, 126 miles
6 Loads, 252 miles Show train

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

May 8th, 1904.

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

332 May 9th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
10 Loads, 446 miles
9 Empty, 724 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
11 Loads, 158 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
8 Loads, 328 miles
3 Empty, 56 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

May 10th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
8 Loads, 486 miles
6 Empty, 394 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
12 Loads, 157 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
13 Loads, 608 miles
6 Empty, 43 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

333 May 11th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
13 Loads, 428 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
8 Loads, 135 miles
1 Empty, 29 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
9 Loads, 324 miles
9 Empty, 512 miles

Train Extra, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
3 Coaches, 87 miles
6 Loads, 174 miles show train
1 Empty, 15 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

May 12th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
14 Loads, 708 miles
7 Empty, 274 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
5 Loads, 120 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
11 Loads, 383 miles
2 Empty, 87 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

334 May 13th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
20 Loads, 1058 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
11 Loads, 137 miles
2 Empty, 44 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
7 Loads, 329 miles
5 Empty, 80 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

May 14th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
15 Loads, 690 miles
10 Empty, 345 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
3 Loads, 87 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
5 Loads, 298 miles
7 Empty, 441 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

May 15th, 1904.

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

335 October 1st, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
11 Loads, 714 miles
28 Empty, 872 miles

Train 184, Madison to Le Roy—29 miles.

1 Caboose, 29 miles
5 Loads, 101 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
15 Loads, 556 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 2nd, 1904.

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 3rd, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
22 Loads, 679 miles
10 Empty, 590 miles

Train 184, Madison to Leroy—29 miles:

1 Caboose, 29 miles
6 Loads, 143 miles
3 Empty, 30 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
9 Loads, 326 miles
7 Empty, 306 miles

Train Extra, Butler to Blue Mound—44 miles:

1 Caboose, 44 miles
7 Empty, 308 Miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
336 1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 4th 1904.

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
11 Loads, 333 miles
14 Empty, 883 miles

Train Extra, Le Roy to Madison—29 miles:

1 Caboose, 29 miles
2 Loads, 58 miles
10 Empty, 60 miles

Train Extra, Butler to Le Roy—79 miles:

1 Caboose, 79 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 5th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
28 Loads, 968 miles
3 Empty, 67 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
13 Loads, 421 miles
11 Empty, 491 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

337 October 6th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
12 Loads, 243 miles
1 Empty, 8 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
8 Loads, 235 miles
8 Empty, 480 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 7th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
30 Loads, 840 miles
14 Empty, 339 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
9 Loads, 342 miles
3 Empty, 193 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 8th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
3 Loads, 324 miles
10 Empty, 322 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
13 Loads, 452 miles
11 Empty, 554 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
16 Loads, 366 miles

338 Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 9th, 1904.

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 10th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
31 Loads, 1028 miles
5 Empty, 163 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
13 Loads, 178 miles
4 Empty, 78 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
16 Loads, 523 miles
12 Empty, 422 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 11th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
16 Loads, 913 miles
2 Empty, 10 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
5 Loads, 233 miles
7 Empty, 430 miles

339 Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 12th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
21 Loads, 927 miles
6 Empty, 298 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
13 Loads, 480 miles
12 Empty, 494 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 13th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
20 Loads, 857 miles
14 Empty, 240 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
8 Loads, 309 miles
15 Empty, 799 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
3 Loads, 75 miles
1 Empty, 30 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

340 October 14th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
17 Loads, 721 miles
3 Loads, 42 miles

Train 184, Madison to Le Roy—29 miles:

1 Caboose, 29 miles
7 Loads, 123 miles
3 Empty, 60 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

October 15th, 1904.

Train 181, Butler to Madison—108 miles:

1 Caboose, 108 miles
19 Loads, 815 miles
7 Empty, 267 miles

Train 182, Le Roy to Butler—79 miles:

1 Caboose, 79 miles
16 Loads, 543 miles
10 Empty, 522 miles

Train 41, Butler to Madison—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

Train 42, Madison to Butler—108 miles:

1 Baggage, 108 miles
1 Coach, 108 miles

 May 1st, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
7 Loads, 439 miles
5 Empty, 376 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
22 Loads, 700 miles
5 Empty, 228 miles

May 2nd, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
22 Loads, 859 miles
10 Empty, 320 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
13 Loads, 489 miles
7 Empty, 280 miles

May 3rd, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
13 Loads, 588 miles
5 Empty, 100 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
12 Loads, 464 miles
7 Empty, 316 miles

May 4th, 1905.

Train 341, Butler to Madison—108 miles:

1 Coach, 108 miles
1 Caboose, 108 miles
12 Loads, 569 miles
2 Empty, 68 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
12 Loads, 485 miles
6 Empty, 255 miles

342 May 5th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
4 Loads, 350 miles
1 Empty, 51 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
15 Loads, 581 miles
4 Empty, 180 miles

May 6th, 1905.

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
8 Loads, 593 miles
4 Empty, 119 miles

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
8 Loads, 423 miles
1 Empty, 44 miles

May 8th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
16 Loads, 718 miles
2 Empty, 3 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
5 Loads, 330 miles
14 Empty, 685 miles

May 9th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
17 Loads, 950 miles
2 Empty, 80 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
10 Loads, 476 miles
2 Empty, 81 miles

May 10th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
18 Loads, 760 miles
15 Empty, 448 miles

Train 342, Madison to Butler—108 miles:

1 Coach, 108 miles
1 Caboose, 108 miles
14 Loads, 554 miles
8 Empty, 421 miles

May 11th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
12 Loads, 514 miles
1 Empty, 31 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
11 Loads, 626 miles
7 Empty, 199 miles

May 12th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
10 Loads, 522 miles
8 Empty, 363 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
15 Loads, 607 miles
3 Empty, 191 miles

May 13th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
7 Loads, 417 miles
2 Empty, 66 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
18 Loads, 544 miles
10 Empty, 207 miles

May 15th, 1905.

Train 341, Butler to Madison—108 miles:

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
19 Loads, 773 miles
1 Empty, 2 miles

Train 342, Madison to Butler—108 miles:

1 Coach, 108 miles
1 Caboose, 108 miles
16 Loads, 692 miles
11 Empty, 480 miles

345 Consists of Trains Between Butler and Madison.

Oct. 2nd, 1905.

Train 341, Butler to Madison—108 miles:

1 Coach, 108 miles
1 Caboose, 108 miles
8 Loads, 433 miles
8 Empty, 79 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
7 Loads, 285 miles
3 Empty, 75 miles

Oct. 3rd, 1905.

Train Extra, Le Roy to Madison—30 miles:

1 Caboose, 30 miles

Train extra, Madison to Le Roy—30 miles:

1 Caboose, 30 miles
10 Loads, 124 miles

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
10 Loads, 440 miles
16 Empty, 454 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
10 Loads, 313 miles
9 Empty, 455 miles

Oct. 5th, 1905.

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
6 Loads, 299 miles
10 Empty, 283 miles

Oct. 6th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
15 Loads, 747 miles
6 Empty, 130 miles

Train 341, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
18 Loads, 718 miles
2 Empty, 61 miles

346 Oct. 7th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
12 Loads, 502 miles
12 Empty, 432 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
24 Loads, 593 miles
5 Empty, 265 miles

Oct. 9th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
11 Loads, 668 miles
8 Empty, 248 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
17 Loads, 552 miles
10 Empty, 249 miles

Oct. 10th, 1905.

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
12 Loads, 413 miles
9 Empty, 341 miles

Oct. 11th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
14 Loads, 782 miles
7 Empty, 156 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
17 Loads, 752 miles
8 Empty, 452 miles

Oct. 12th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
15 Loads, 1083 miles
5 Empty, 95 miles

347 Train 342, Madison to Butler—108 miles.

1 Caboose, 108 miles
1 Coach, 108 miles
15 Loads, 384 miles
4 Empty, 432 miles

Oct. 14th, 1905.

Train 341, Butler to Madison—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
16 Loads, 604 miles
10 Empty, 283 miles

Train 342, Madison to Butler—108 miles:

1 Caboose, 108 miles
1 Coach, 108 miles
15 Loads, 489 miles
5 Empty, 540 miles

348 May 1st, 1906.

Train 741, Butler to Madison—108 miles:

1 Coach, 108 miles
4 Loads, 247 miles
4 Empty, 87 miles

Train 742, Madison to Butler—108 miles:

2 Coaches, 216 miles
7 Loads, 320 miles
3 Empty, 162 miles

May 2nd, 1906.

Train 741, Butler to Madison—108 miles:

2 Coaches, 216 miles
4 Loads, 257 miles
8 Empty, 154 miles

Train 742, Madison to Butler—108 miles:

1 Coach, 108 miles
14 Loads, 410 miles
7 Empty, 159 miles

May 3rd, 1906.

Train 741, Butler to Madison—108 miles:

1 Coach, 108 miles
9 Loads, 336 miles

Train 742, Madison to Butler—108 miles:

2 Coaches, 216 miles
8 Loads, 317 miles
1 Empty, 84 miles

May 4th, 1906.

Train 741, Butler to Madison—108 miles:

2 Coaches, 216 miles
10 Loads, 612 miles
2 Empty, 31 miles

Train 742, Madison to Butler—108 miles:

1 Coach, 108 miles
6 Loads, 292 miles
4 Empty, 142 miles

May 5th, 1906.

Train 741, Butler to Madison—108 miles:

1 Coach, 108 miles
5 Loads, 368 miles

Train 742, Madison to Butler—108 miles:

2 Coaches, 216 miles
8 Loads, 405 miles
6 Empty, 219 miles

349 May 7th, 1906.

Train 741, Butler to Madison—108 miles:

2 Coaches, 216 miles
9 Loads, 429 miles
9 Empty, 244 miles

Train 742, Madison to Butler—108 miles:

1 Coach, 108 miles
7 Loads, 337 miles
5 Empty, 236 miles

Train Extra, Le Roy to Madison—29 miles:

1 Coach, 29 miles

Train Extra, Madison to Le Roy—29 miles

1 Coach, 29 miles
3 Loads, 69 miles

May 8th, 1906.

Train 741, Butler to Madison—108 miles:

1 Coach, 108 miles
9 Loads, 400 miles
8 Empty, 559 miles

Train 742, Madison to Butler—108 miles:

2 Coaches, 216 miles
8 Loads, 399 miles
2 Empty, 34 miles

May 9th, 1906.

Train 741, Butler to Madison—108 miles:

2 Coaches, 216 miles
9 Loads, 347 miles
4 Empty, 74 miles

Train 742, Madison to Butler—108 miles:

1 Coach, 108 miles
10 Loads, 325 miles
1 Empty, 30 miles

May 10th, 1906.

Train 741, Butler to Madison—108 miles:

1 Coach, 108 miles
8 Loads, 368 miles
13 Empty, 298 miles

Train 742, Madison to Butler—108 miles:

2 Coaches, 216 miles
11 Loads, 496 miles

May 11th, 1906.

Train 741, Butler to Madison—108 miles:

2 Coaches, 216 miles
4 Loads, 329 miles
3 Loads, 93 miles

350–370

Train 742, Madison to Butler—108 miles:

1 Coach, 108 miles
13 Loads, 444 miles
2 Empty, 61 miles

May 12th, 1906.

Train 741, Butler to Madison—108 miles:

1 Coach, 108 miles
7 Loads, 490 miles

Train 742, Madison to Butler—108 miles:

2 Coaches, 216 miles
15 Loads, 557 miles

May 14th, 1906.

Train 741, Butler to Madison—108 miles.

2 Coaches, 216 miles
5 Loads, 314 miles
20 Empty, 378 miles

Train 742, Madison to Butler—108 miles:

1 Coach, 108 miles
9 Loads, 382 miles
2 Empty, 49 miles

May 15th, 1906.

Train 741, Butler to Madison—108 miles:

1 Coach, 108 miles
8 Loads, 339 miles
3 Empty, 73 miles

Train 742, Madison to Butler—108 miles:

2 Coaches, 216 miles
17 Loads, 604 miles
7 Empty, 276 miles

* * * * * * *

371 No. 15. JRW.

ANDERSON.

Amount of Capital Stock Subscribed to the St. Louis & Emporia R. R. and for Which a Like Amount of Bonds Were Issued.

Ozark Twp., 150 shares of $100 each..... $15,000 stock
Bonds to the amount of $15000 dated July 31" 1886.
Indian Creek Twp., 100 shares of $100 each..... $10,000 stock
Bonds to the amount of $10,000 dated Jan. 15" 1887.

Population of Anderson County	13007
Population of Indian Creek Twp	520
Population of Ozark Twp	1004
Population of Lone Elm Twp	781
Population of Rich Twp	986

Grain Production of 1904.

Acreage of corn	84925	Estimated yield	10 bu...	850,000
Wheat	5400	" "	17 bu...	100,000
Flax	6070	" "	7 bu...	42,500
Oats	14160	" "	20 bu...	280,000
Kaffir corn	4690	" "	25 bu...	117,000
Tons tame hay				13,000
Tons wild hay				25,500

Grain Production of 1905.

Acreage of corn	71,235	Estimated yield	30 bu...	2,137,000
Wheat	7357	" "	20 bu...	147,000
Oats	8349	" "	20 bu...	167,000
Flax	7390	" "	7 bu...	51,750
Kaffir corn	5203	" "	30 bu...	156,000
Tons tame hay				16,800
Tons wild hay				26,800

Number of cattle 1903	35,250	For 1905	29,675
For 1904	31,280	For 1906	27,740
Number of hogs 1903	23,175	For 1905	20,800
For 1904	23,495	For 1906	24,545

Value of animals fattened and sold for slaughter 1904	$613,000
For 1905	455,800
For 1906	538,400

Gas Wells.

21 productive wells with estimated average flow of ½ million ft. per day.

372 Indian Creek Twp.

Value of animals sold for slaughter 1904	20565
Rich Tpt	60100
Lone Elm	39100
Ozark	39400

1905.

Indian Creek	14885
Ozark	20390
Lone Elm	45697
Rich	53991

1906.

Indian Creek	20557
Ozark	14674
Lone Elm	20884
Rich	25800

Year 1905, as Shown by 1906 Assessment.

		Potosi.	Md. City.	Blue Md.	Paris.	Stanton.	County.
Acreage planted in fall of 1905 and spring of 1906	Wheat, acres	1628	598	342	942	495	8933
	Corn "	7994	6395	10231	7792	4623	99398
	Oats "	1317	774	911	820	540	11106
	Flax "	362	665	786	186	481	6951
Cut in 1905	Tame hay, tons	1346	2135	3285	2003	1461	20446
	Wild hay, tons	756	1452	4884	553	635	13377
Sold during year ending March 1st, 1906	Val. animals killed or sold for slaughter, dollars	47254	19504	79905	27140	24555	513397
	Val. poultry & eggs, dollars	13005	9446	12597	10988	6385	132394
	Val. milk & cream, dollars	2987	2584	3845	735	1290	61830

374 *Bonds.*

Potosi R. R. Miles..... 8.54 Mi.
" siding..... 1.11 "
Md. City R. R. " ..... 8.57 "
" " siding..... .46
——— about 27½ mis.
Blue Md. R. R. " 9.06
siding..... .2

29000 total.

Md. City ...19 one Th. 1000 not pd.
Pd..... $10,000.
Potosi..... 2-500 to pay.
" Paid..... $3000.

34000 total.

Blue Md..... 7500 pd.
" " ..... 25500 total.
To pay..... 18000.

		Potosi.	Md. City.	Blue Md.	Paris.	Stanton.	County.
Acreage planted in fall of 1903 and spring of 1904	Wheat, acres	1934	454	96	1859	410	11049
	Corn "	8383	6133	10412	7597	5832	90674
	Oats "	1038	1061	1071	969	510	11504
	Flax "	382	492	853	315	285	6565
Cut in 1903	Tame hay, tons	2719	1648	2484	2232	1335	24519
	Wild hay, tons	1566	1089	3191	284	1000	12893
Sold during the year ending March 1st, 1904	Val. animals killed or sold for slaughter, dollars	52641	26886	81560	.....	26320	641642
	Value poultry & eggs	12730	7485	10000	10871	5747	113027
	Val. milk & butter	2430	2881	5340	660	7245	40709

Year 1905.

		Potosi.	Md. City.	Blue Md.	Paris.	Stanton.	County.
Acreage planted in fall of 1904 and spring of 1905	Wheat, acres.	1215	363	111	587	387	6970
	Corn "	8563	6315	9145	7559	4117	86604
	Oats "	921	583	894	728	479	9344
	Flax	375	669	1259	649	586	8676
Cut in 1904	Tame hay, tons	2807	2315	3228	2670	1151	25461
	Wild hay, tons.	1992	1735	3583	1019	1195	15250
Sold during the year ending March 1st, 1905	Val. animals killed or sold for slaughter, dollars	44461	5089	76801	33674	33935	452446
	Val. poultry & eggs	14679	11051	10573	11143	7565	126562
	Val. milk & butter	4181	3310	3967	1914	15835	37097

Bonds.

Mound City Township	$29000
Potosi Township	35000
Blue Mound Township	25500.00

Population ..... 819 City 1655
836

1377 twp.
1510 city = 2887

820
648 = 1468

* * * * * * *

CAPITAL STOCK.

DESCRIPTION.		NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF SHARES.	TOTAL PAR VALUE AUTHORIZED.	TOTAL AMOUNT ISSUED AND OUTSTANDING.	DIVIDENDS DECLARED DURING YEAR.	
						RATE.	AMOUNT.
Capital Stock:	Common,	270000	100 00	27000000 00	25498100 00		None
	Preferred,						
	TOTAL,	270000	100 00	27000000 00	25498100 00		None

MANNER OF PAYMENT FOR CAPITAL STOCK.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER SHARES ISSUED AND OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	Common,					
	Preferred,					
Issued for Construction:	Common,					
	Preferred,					
Issued for Reorganization:	Common,					
	Preferred,					
Issued for H. Scott, Wichita & Western Ry. Capital Stock				70000		
Issued for purpose of complying with the terms of the articles of consolidation.				184981		
	TOTAL,			254981		

FUNDED DEBT.

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

CLASS OF BOND OR OBLIGATION.	TIME. DATE OF ISSUE.	TIME. WHEN DUE.	AMOUNT OF AUTHORIZED ISSUE.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	CASH REALIZED ON AMOUNT ISSUED.	INTEREST. RATE.	INTEREST. WHEN PAYABLE.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
C. Spire Rapid City & Ottawa Ry 1st Mtge	2/1/90	2/1/11	11100000 00	11100000 00	11100000 00	11100000 00	6%	Jan'y & July	666000 00	None
Topeka, Salina & Western R.R. 1st Mtge	11/1/83	11/1/23	40000000 00	12730000 00	12730000 00	12730000 00	6%	Jan'y & July	763800 00	None
Co Spire Smoky Valley & Western Ry 1st Mtge	7/1/87	7/1/17	15000 per mile	7170000 00	7170000 00	7170000 00	6%	Jan'y & July	430200 00	None
Texas & Colo. R.R. 1st Mtge	7/1/86	7/1/26	10000 per mile	2041000 00	2041000 00	2041000 00	6%	Jan'y & July	122460 00	None
Denver Memphis & Atlantic Ry 1st Mtge	7/1/88	7/1/18	16000 per mile	6561000 00	6561000 00	6561000 00	6%	Jan'y & July	393660 00	None
Interstate Ry 1st Mtge	7/1/90	7/1/20	16000 per mile	1622000 00	1622000 00	1622000 00	6%	Jan'y & July	97320 00	None
Kan. Neb. & Dak. Ry 1st Mtge	7/1/86	7/1/16	20000000 00	20550000 00	20550000 00	20550000 00	6%	Jan'y & July	1233000 00	None
Wichita & Col. R.W. 1st Mtge	7/1/86	7/1/11	15000 per mile	705000 00	705000 00	705000 00	6%	Jan'y & July	42300 00	None
Salina, Sterling & Tex. R.R. 1st Mtge	7/1/86	7/1/26	15000 per mile	600000 00	600000 00	600000 00	6%	Jan'y & July	36000 00	None
Co Spire Creek Ry 1st Mtge	7/1/87	7/1/27	39000000 00	3760000 00	3760000 00	3760000 00	6%	Jan'y & July	225600 00	None
Certificates of Interest Western Ry 1st Mtge	3/1/86	3/1/26	10000 per mile	5060000 00	8060000 00	8060000 00	5%	Mar. & Sept.	40300 00	40300 00
Wichita Pac. Ry 1st Mtge	7/1/86	7/1/91	3000000 00	3000000 00	3000000 00	3000000 00	6%	July	18000 00	None
H. Scott, Wichita & Western Ry 1st Mtge	7/1/87	7/1/17	10000000 00	7666000 00	7666000 00	7666000 00	7%	May & Nov.	326620 00	None
H. Scott Wichita & Western Ry 2nd Mtge	7/1/87	7/1/17	10000000 00	10000000 00	10000000 00	10000000 00	4%	May & Nov.		None
TOTAL: Mortgage Bonds,				23532000 00	23532000 00	23532000 00			1390320 00	70300 00
Miscellaneous Obligations,			None	23532000 00	23532000 00	23532000 00			1390320 00	70300 00
Income Bonds,			None							
GRAND TOTAL,				23532000 00	23532000 00	23532000 00			1390320 00	70300 00

FUNDED DEBT—CONTINUED.

EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

SERIES OR OTHER DESIGNATION.	DATE OF ISSUE.	TERM.	NUMBER OF PAYMENTS.	EQUIPMENT COVERED.	REMARKS.
			None		

B. STATEMENT OF AMOUNT.

SERIES OR OTHER DESIGNATION.	CASH PAID ON DELIVERY OF EQUIPMENT	DEFERRED PAYMENTS—PRINCIPAL.		DEFERRED PAYMENTS—INTEREST.				
		ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
			None					
TOTAL,								

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	AMOUNT ISSUED	AMOUNT OUTSTANDING.	INTEREST.	
			AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
Mortgage Bonds—Page 19,	23532000000	23532000000	1390320000	790300000
Miscellaneous Obligations—Page 19,	None			
Income Bonds—Page 19,	None			
Equipment Trust Obligations—Page 21,	None			
TOTAL,	23532000000	23532000000	1390320000	790300000

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING	PRINCIPAL.		INTEREST.		
			AMOUNT PAID DURING YEAR.	AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
			None				
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1907.	
Cash,		Receiver's Certificates,	
Bills Receivable,		Loans and Bills Payable,	
Due from Agents,		Audited Vouchers and Accounts,	
Due from Solvent Companies and Individuals,		Wages and Salaries,	
Net Traffic Balances due from other Companies,		Net Traffic Balances due to other Companies,	
Other Cash Assets [Excluding "Materials and Supplies"].[1]		Dividends not Called for,	
		Matured Interest Coupons Unpaid (Including Coupons due July 1).	
		Rents due July 1	
		Miscellaneous,	
TOTAL—CASH AND CURRENT ASSETS,		TOTAL—CURRENT LIABILITIES,	
BALANCE—CURRENT LIABILITIES,		BALANCE—CASH ASSETS,	
TOTAL,		TOTAL,	

[1] Materials and Supplies on hand, $ .....

[*See General Balance Sheet—Page 40.*]

RECAPITULATION.

A. FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT.

ACCOUNT.	TOTAL AMOUNT OUTSTANDING.	APPORTIONMENT.		AMOUNT PER MILE OF LINE.		REMARKS.
		TO RAILROADS.	TO OTHER PROPERTIES. [Page 17.]	MILES.	AMOUNT.	
Capital Stock—Page 17,	25495/0000	25495 00000		1 54960	17390	
Bonds—Page 19 ["Grand Total"],	23532 00000	23532 00000		1 47960	16233	
Equipment Trust Obligations—Page 21,	None					
TOTAL,	49030/0000	49030/0000		1 77960	33823	

B. FOR MILEAGE OPERATED BY ROAD MAKING THIS REPORT (TRACKAGE RIGHTS EXCLUDED), THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

NAME OF ROAD.	CAPITAL STOCK.	FUNDED DEBT.	TOTAL.	AMOUNT PER MILE OF LINE.	
				MILES.	AMOUNT.
GRAND TOTAL,					

INCOME ACCOUNT.

[FOR ROADS MAKING OPERATING REPORTS.]

Gross Earnings from Operation—Page 35,		
Less Operating Expenses—Page 45,		
INCOME FROM OPERATION,		
DEFICIT,		
Dividends on Stocks Owned—Page 37,		
Interest on Bonds Owned—Page 39,		
Miscellaneous Income—Page 41,		
INCOME FROM OTHER SOURCES,		
TOTAL INCOME,		
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued—Page 23,		
Interest on Interest-bearing Current Liabilities, etc.,		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,		
Taxes—Page 79, A,		
Permanent Improvements—Page 29,		
Other Deductions,		
TOTAL DEDUCTIONS FROM INCOME,		
NET INCOME,		
DEFICIT,		
Dividends, per cent, Common Stock—Page 17,		
Dividends, per cent, Preferred Stock—Page 17,		
Other Payments from Net Income,		
TOTAL,		
Surplus from Operations of Year ending June 30, 1907,		
Deficit from Operations of Year ending June 30, 1907,		
Surplus on June 30, 1906, [From "General Balance Sheet," 1906 Report.]		
Deficit on June 30, 1906, [From "General Balance Sheet," 1906 Report.]		
Additions for Year,		
Deductions for Year,		
SURPLUS ON JUNE 30, 1907. [For entry on "General Balance Sheet," Page 51.]		
DEFICIT ON JUNE 30, 1907, [For entry on "General Balance Sheet," Page 49.]		

ITEM.	TOTAL RECEIPTS.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS
PASSENGER:			
Passenger Revenue,			
Less Repayments—			
Tickets Redeemed,			
Excess Fares Refunded,			
Other repayments,			
Total Deductions,			
TOTAL PASSENGER REVENUE,			
Mail,			
Express,			
Extra Baggage and Storage,			
Other items,			
TOTAL PASSENGER EARNINGS,			
FREIGHT:			
Freight Revenue,			
Less Repayments—			
Overcharge to Shippers,			
Other repayments,			
Total Deductions,			
TOTAL FREIGHT REVENUE,			
Stock Yards,			
Elevators,			
Other items,			
TOTAL FREIGHT EARNINGS,			
TOTAL PASSENGER AND FREIGHT EARNINGS,			
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,			
Car Per Diem and Mileage—Balance,			
Hire of Equipment—Balance,			
Telegraph and Telephone Companies,			
Rents from Tracks, Yards, and Terminals—Page 41,			
Rents not otherwise provided for,			
Other sources,			
TOTAL OTHER EARNINGS,			
Total Gross Earnings from Operation—Kansas,			
Total Gross Earnings from Operation—Entire Line.			

ITEM.	AMOUNT.
MAINTENANCE OF WAY AND STRUCTURES:	
1. Repairs of Roadway,	
2. Renewals of Rails,	
3. Renewals of Ties,	
4. Repairs and Renewals of Bridges and Culverts,	
5. Repairs and Renewals of Fences, Road Crossings, Signs, and Cattle Guards,	
6. Repairs and Renewals of Buildings and Fixtures,	
7. Repairs and Renewals of Docks and Wharves,	
8. Repairs and Renewals of Telegraph,	
9. Stationery and Printing,	
10. Other Expenses,	
TOTAL,	
MAINTENANCE OF EQUIPMENT:	
11. Superintendence,	
12. Repairs and Renewals of Locomotives,	
13. Repairs and Renewals of Passenger Cars,	
14. Repairs and Renewals of Freight Cars,	
15. Repairs and Renewals of Work Cars,	
16. Repairs and Renewals of Marine Equipment,	
17. Repairs and Renewals of Shop Machinery and Tools,	
18. Stationery and Printing,	
19. Other Expenses,	
TOTAL,	
CONDUCTING TRANSPORTATION:	
20. Superintendence,	
21. Engine and Roundhouse Men,	
22. Fuel for Locomotives,	
23. Water Supply for Locomotives,	
24. Oil, Tallow, and Waste for Locomotives,	
25. Other Supplies for Locomotives,	
26. Train Service,	
27. Train Supplies and Expenses,	
28. Switchmen, Flagmen, and Watchmen,	
29. Telegraph Expenses,	
30. Station Service,	
31. Station Supplies,	
32. Switching Charges—Balance,	
33. Car Per Diem and Mileage—Balance,	
34. Hire of Equipment—Balance,	
Total carried forward,	

ITEM.	AMOUNT.
CONDUCTING TRANSPORTATION—Continued.	
Total brought forward,	
35. Loss and Damage,	
36. Injuries to Persons,	
37. Clearing Wrecks,	
38. Operating Marine Equipment,	
39. Advertising,	
40. Outside Agencies,	
41. Commissions,	
42. Stock Yards and Elevators,	
43. Rents for Tracks, Yards, and Terminals—Page 47, B,	
44. Rents of Buildings and other Property,	
45. Stationery and Printing,	
46. Other Expenses,	
TOTAL,	
GENERAL EXPENSES:	
47. Salaries of General Officers,	
48. Salaries of Clerks and Attendants,	
49. General Office Expenses and Supplies,	
50. Insurance,	
51. Law Expenses,	
52. Stationery and Printing (General Offices),	
53. Other Expenses,	
TOTAL,	
RECAPITULATION OF EXPENSES:	
54. Maintenance of Way and Structures,	
55. Maintenance of Equipment,	
56. Conducting Transportation,	
57. General Expenses,	
GRAND TOTAL,	
PERCENTAGE OF EXPENSES TO EARNINGS—ENTIRE LINE.	
OPERATING EXPENSES—STATE OF KANSAS,	
Maintenance of Way and Structures,	
Maintenance of Equipment,	
Conducting Transportation,	
General Expenses,	
TOTAL,	
PERCENTAGE OF EXPENSES TO EARNINGS—KANSAS,	

MILEAGE.

A. MILEAGE OF ROAD OPERATED (ALL TRACKS).

LINE IN USE.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,										
Miles of second track,										
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,										
TOTAL MILEAGE OPERATED (ALL TRACKS).										

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
TOTAL MILEAGE OPERATED (SINGLE TRACK).										

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
Missouri	15·61			15·61			15·61	
Kansas.	142·58	1·41		143·99			143·99	
TOTAL MILEAGE OWNED (SINGLE TRACK).	143·19	1·41		144·60			144·60	

MILEAGE—STATE OF KANSAS.

A. MILEAGE OF ROAD OPERATED (ALL TRACKS).

LINE IN USE.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,										
Miles of second track,										
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,										
TOTAL MILEAGE OPERATED (ALL TRACKS).										

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF KANSAS.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
TOTAL MILEAGE OPERATED (SINGLE TRACK).										

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF KANSAS.	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
Missouri	15.61			15.61			15.61	
Kansas	1421.58	12.41		1433.99			1433.99	
TOTAL MILEAGE OWNED (SINGLE TRACK).	1437.19	12.41		1449.60			1449.60	

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TAXES AND ASSESSMENTS OF ALL KINDS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
TOTAL,								

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
TOTAL,								

CAPITAL STOCK.

DESCRIPTION.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF SHARES.	TOTAL PAR VALUE AUTHORIZED.	TOTAL AMOUNT ISSUED AND OUTSTANDING.	DIVIDENDS DECLARED DURING YEAR. RATE.	AMOUNT.
Capital Stock: Common,	1000000	100 00	100000000 00	77817875 00	July 1900 2½ % on 77812500	1945313 00
					January 1906 2½ % on same	1945313 00
					June 1906 2½ % on same	1945313 00
Preferred,						
TOTAL,	1000000	10000	100000000 00	77817875 00	7½ %	5836300 00

MANNER OF PAYMENT FOR CAPITAL STOCK.	NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER SHARES ISSUED AND OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash: Common,			28273844 81	28273844 81	
~~Preferred~~,					
Issued for Cap. Stock Denver & Rio Grande R.R.			134955 05 19		
Issued for Construction: K.C.B. Common,			14000 —		
~~Preferred~~,					
Issued in Exchange for Mo. Pac. Ry. Gold Debenture Bonds retired			116280 —		
Issued for ~~Reorganization~~: Cap. Stock M.K.&T. Ry. Co. Common,					
Kansas exchanged and Cancelled ~~Preferred~~,			130 —		
Issued for Capital Stock & Bonds The N.C. N.W. R.R.			29935 —		
Issued for Cap. Stk. St.L.I.M.&S. Ry exchanged			193216 63 20		
Issued = One share of stock with each collateral Bond as Above,					
7000 Bonds sold.			7000 —		
TOTAL,			77817875 00	28273844 81	

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FUNDED DEBT.

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

CLASS OF BOND OR OBLIGATION.	TIME. DATE OF ISSUE.	TIME. WHEN DUE.	AMOUNT OF AUTHORIZED ISSUE.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	CASH REALIZED ON AMOUNT ISSUED.	INTEREST. RATE.	INTEREST. WHEN PAYABLE.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
Cac. R.R. of Mo. 1st	5/1/868	5/1/1995	7000000000	7000000000	7000000000	7000000000	4%	Feb & Aug.	280000000	252000000
" 2nd	7/1/871	11/1938	3000000000	3000000000	2573000000	3000000000	5%	Jan'y & July	12865000	12347500
" St L R E.	6/1/872	7/1/1935	80000000	80000000	80000000	80000000	5 "	May & Nov	4000000	4028750
" Cal't Bch.	12/1/1893	12/1/1938	50000000	50000000	2450000	50000000	4½ "	April & Oct.	106875	102600
The Mo. Pac Ry 3rd	4/1/1876	10/1/1906	4500000000	4500000000	3828000000	4500000000	7 "	May & Nov	26796000	26887000
" " Lay. Dev.	10/1/1880	10/1/1920	65000000	65000000	65000000	65000000	5 "	Feb & Aug	3250000	3253750
The Mo. Pac Ry Cold	7/1/1880	11/1920	30000000000	14904000000	14904000000	14904000000	6 "	May & Nov.	894240000	898710000
The Authorized issue of Consolid Mtge Bonds provide for taking up all previous issues of Mtge. Bonds; but the 1st & 2nd St L & S E. and Cal't Bch Mtge Bonds have been extended by agreement										
The Mo. Pac Ry Trust 5's	4/1/1887	4/1/1917	15000000000	14376000000	14376000000	14376000000	5 "	Mch & Sept	71880000	71747500
The Mo. Pac Ry 1st Coll.	9/1/1870	5/1/1920	10000000000	9636000000	9636000000	9636000000	5 "	Feb & Aug	48180000	18520000
The Mo. Pac Ry 2 yr. Gold Notes	3/1/07	3/1/08	6000000000	6000000000	6000000000	6000000000	5 "	" "	30000000	30000000
The Mo. Pac. Ry 4% Gold Loan	3/1/1905	3/1/1975	5000000000	2500000000	2500000000	2200000000	4 "	Mch & Sept	100000000	99523000
TOTAL: Mortgage Bonds,			30000000000	31354000000	30000000000	31354000000			1654037500	1656170000
Miscellaneous Obligations,			8100000000	5501200000	5501200000	4251200000			250060000	249790500
Income Bonds,										
GRAND TOTAL,			111000000000	86366000000	55012000000	83766000000			7154637500	7157045000

FUNDED DEBT—CONTINUED.

EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

SERIES OR OTHER DESIGNATION.	DATE OF ISSUE.	TERM.	NUMBER OF PAYMENTS.	EQUIPMENT COVERED.	REMARKS.
Mo. Pac. Equipment Assn.					
Series A	Aug 27th 1902	10 yrs.	10	36 Locos, 7 Bag. 5 Coaches, and Postal Cars;	1500 Box and 500 Coal Cars.
B	Jany 1st 03	"	"	27 Locomotives.	
" Spl.	Mch 1st "	"	"	500 Steel Gondolas	
C.	Apl. 29th "	"	"	24 Locos. 2 Coaches, 10 Chair, 5 Bag,	3 Combin Cars; 2150 Box, 500 Coal Cars
D	Dec 5th "	"	"	300 Hopper Bottom Gondolas.	
E.	June, 04	"	"	20 Locomotives	
F.	Dec. "	"	"	2 Coaches, 1 Chair, 1 Dining, 1 Combin.	1 Postal Car, 500 Gondolas.
G.	June 15th 05	"	"	25 Locomotives, 10 Postal Cars.	
H.	Sept 1st "	"	"	500 Box Cars, 1000 Coal Cars.	

B. STATEMENT OF AMOUNT.

SERIES OR OTHER DESIGNATION.	CASH PAID ON DELIVERY OF EQUIPMENT.	DEFERRED PAYMENTS—PRINCIPAL.		DEFERRED PAYMENTS—INTEREST.				
		ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
A.	277500	20300000 00	14210000 00	5328750	2309125 0	733875 0	733875 0	5%
B.	775000	9700000 00	5820000 00	2207792	945750 0	327375 0	327375 0	"
C.	3747 25	28200000 00	19740000 00	7807072	3948000 0	1128000 0	1128000 0	"
D.	680000	2500000 00	2000000 00	675342	400000 0	106250 0	106250 0	"
E.	75000	3000000 00	2400000 00	750000	490000 0	127500 0	127500 0	"
F.	968884	4500000 00	4320000 00	1301866	972000 0	228000 0	228000 0	"
G.	125000	4300000 00	3870000 00	1709930	967500 0	203493 0	203493 0	"
H.	493500	10000000 00	9000000 00	2437645	2137500 0	301458	301458	"
TOTAL,	3961607	82800000 00	61360000 00	21679253 4	12169875 0	3156638	3156638	5%

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
Mortgage Bonds—Page 19,	31 33 5 0 0 0 0 0	30 0 0 0 0 0 0 0 0	1 6 5 4 0 3 7 5 0	1 6 5 6 1 7 0 0 0
Miscellaneous Obligations—Page 19,	5 5 0 1 2 0 0 0 0	5 5 0 1 2 0 0 0 0 0	2 5 0 0 6 0 0 0 0	2 7 9 7 9 5 0 0
Income Bonds—Page 19,				
Equipment Trust Obligations—Page 21,	2 3 1 4 0 1 6 0 7	6 1 3 6 0 0 0 0 0	3 1 5 6 6 3 5 8	3 1 5 6 6 3 5 8
TOTAL,	9 4 6 8 5 6 1 6 0 7	9 1 1 7 5 0 0 0 0 0	4 4 7 0 3 0 1 3 8	4 4 6 9 7 0 8 8 8

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL. AMOUNT PAID DURING YEAR.	PRINCIPAL. AMOUNT FUNDED OR OTHERWISE DISPOSED OF	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.	RATE.
			None				
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1907.	
Cash,		Receiver's Certificates,	
Bills Receivable,		Loans and Bills Payable,	
Due from Agents,		Audited Vouchers and Accounts,	
Due from Solvent Companies and Individuals,		Wages and Salaries,	
Net Traffic Balances due from other Companies,		Net Traffic Balances due to other Companies,	
Other Cash Assets [Excluding "Materials and Supplies"].[1]		Dividends not Called for,	
		Matured Interest Coupons Unpaid (Including Coupons due July 1).	
		Rents due July 1,	
		Miscellaneous,	
TOTAL—CASH AND CURRENT ASSETS,		TOTAL—CURRENT LIABILITIES,	
BALANCE—CURRENT LIABILITIES,		BALANCE—CASH ASSETS,	
TOTAL,		TOTAL,	

[1] Materials and Supplies on hand, $.....

[See General Balance Sheet—Page 49.]

RECAPITULATION.

A. FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT.

ACCOUNT.	TOTAL AMOUNT OUTSTANDING.	APPORTIONMENT. TO RAILROADS.	APPORTIONMENT. TO OTHER PROPERTIES. [Page 11.]	AMOUNT PER MILE OF LINE. MILES.	AMOUNT PER MILE OF LINE. AMOUNT.	REMARKS.
Capital Stock—Page 17,	778178750 0	778178750 0		113426	68607	
Bonds—Page 19 ["Grand Total"],	850120000 0	850120000 0		113424	74949	
Equipment Trust Obligations—Page 21,	6136000 00	6136000 00		113426	5410	
TOTAL,	1689658750 0	1689658750 0		113426	148966	

B. FOR MILEAGE OPERATED BY ROAD MAKING THIS REPORT (TRACKAGE RIGHTS EXCLUDED), THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

NAME OF ROAD.	CAPITAL STOCK.	FUNDED DEBT.	TOTAL.	AMOUNT PER MILE OF LINE. MILES.	AMOUNT PER MILE OF LINE. AMOUNT.
The Missouri Pacific Railway	778178750 0	911480000 0	1689658750 0	113426	148966
St. Roy and Carey Valley Air Line R.R.	5400000 0	5200000 0	10600000 0	5178	20474
Rockwells St. Louis and Southern Ry.	Cannot answer.			4395	
Kansas City and So. W. Ry of Mo.	20700000	40700000 0	61400000 0	2070	29662
Kansas City and So. West. Ry.	2760000 0	5500000 0	8260000 0	2700	30573
Kansas and Colorado Pacific Ry.	25498100 0	23532000 0	49030100 0	177960	33028
Pueblo and State Line R.R.	15500000 0	22700000 0	38200000 0	15212	25112
Minneapolis and Kansas Central Ry.	3000000 0	2250000 0	5250000 0	1476	37876
Kansas Southwestern Ry	39777000	3720000 0	16997000	2791	30391
Rock County R.R.	5000000 0	2750000 0	7750000 0	1823	42466
Pacific Railway in Nebraska	10958000 0	10950000 0	21908000 0	7300	30011
Nevada & Minden Ry.	4500000 0		4500000 0	3256	13821
" " " of Kansas.	6750000 0		6750000 0	4115	16409
St. Louis, Oak Hill and Carondelet Ry	7000000 0	1000000 0	8000000 0	630	126984
Omaha Belt Ry	8000000 0		8000000 0	1617	49474
St. Scott Central Ry	11148000 0	9720000 0	20868000 0	5705	36578
Nebraska Southern Ry	2718000 0	2120000 0	4838000 0	1612	30012
Omaha Southern	3823000 0	3820000 0	7643000 0	2544	30043
Joplin & Western Ry.	916000 0	690000 0	1606000 0	539	34959
Kansas City Mem. Ry.	4016000 0	4010732 5	8026732 5	16765	49633
Pittsburg, Carson & S. W. Ry	516000 0		516000 0	7323	11936
Carthage and Western	180000 0		180000 0	1796	1002
GRAND TOTAL,	1168877150 0	1267697320 5	2433574470 5	343195	70929

INCOME ACCOUNT.

[FOR ROADS MAKING OPERATING REPORTS.]

Gross Earnings from Operation—Page 35,	21506592.41	
Less Operating Expenses—Page 45,	15963,612.20	
INCOME FROM OPERATION,		5541,980.21
DEFICIT,		
Dividends on Stocks Owned—Page 37,	6341027.40	
Interest on Bonds Owned—Page 39,	493560.20	
Miscellaneous Income—Page 41,	491,128.17	
INCOME FROM OTHER SOURCES,		6983,165.77
TOTAL INCOME,		
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued—Page 23,	4470,301.38	
Interest on Interest-bearing Current Liabilities, etc.,		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,	91,300.00	
Taxes—Page 79, A,	813,392.03	
Permanent Improvements—Page 29,		
Other Deductions,	216,816.97	
TOTAL DEDUCTIONS FROM INCOME,	5591,810.38	
NET INCOME,		6932,185.74
DEFICIT,		
Dividends, 7½ per cent, Common Stock—Page 17,	5836,305.00	
Dividends, per cent, Preferred Stock—Page 17,		
Other Payments from Net Income,		
TOTAL,		5836,305.00
Surplus from Operations of Year ending June 30, 1907,		1096,880.74
Deficit from Operations of Year ending June 30, 1907,		
Surplus on June 30, 1906, [From "General Balance Sheet," 1906 Report.]		5358,917.67
Deficit on June 30, 1906, [From "General Balance Sheet," 1906 Report.]		
Additions for Year,		
Deductions for Year,		
SURPLUS ON JUNE 30, 1907, [For entry on "General Balance Sheet," Page 51.]		6455,798.41
DEFICIT ON JUNE 30, 1907, [For entry on "General Balance Sheet," Page 49.]		

EARNINGS FROM OPERATION—STATE OF KANSAS.

ITEM	TOTAL RECEIPTS.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS.
PASSENGER:			
Passenger Revenue,	21520731		
Less Repayments—			
Tickets Redeemed,		267759	
Excess Fares Refunded,		208077	
Other repayments,		29756	
Total Deductions,		1505592	
TOTAL PASSENGER REVENUE,			21369623
Mail,			3285391
Express,			1806512
Extra Baggage and Storage,			
Other items,			
TOTAL PASSENGER EARNINGS,			26050282
FREIGHT:			
Freight Revenue,	27032773		
Less Repayments—			
Overcharge to Shippers,		933724	
Other repayments,			
Total Deductions,		933724	
TOTAL FREIGHT REVENUE,			26099049
Stock Yards,			
Elevators,			
Other items,			
TOTAL FREIGHT EARNINGS,			26099049
TOTAL PASSENGER AND FREIGHT EARNINGS,			102599831
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,			
Car Per Diem and Mileage—Balance,			1130320
Hire of Equipment—Balance,			
Telegraph and Telephone Companies,			
Rents from Tracks, Yards, and Terminals—Page 41,			2649228
Rents not otherwise provided for,			2693513
Other sources,			5654087
TOTAL OTHER EARNINGS,			22332328
Total Gross Earnings from Operation—Kansas,			124931159
			0
Total Gross Earnings from Operation—Entire Line.			215065941

ITEM.	AMOUNT.
MAINTENANCE OF WAY AND STRUCTURES:	
1. Repairs of Roadway,	1784393 49
2. Renewals of Rails,	234860 84
3. Renewals of Ties,	293437 06
4. Repairs and Renewals of Bridges and Culverts,	202118 52
5. Repairs and Renewals of Fences, Road Crossings, Signs, and Cattle Guards,	38299 27
6. Repairs and Renewals of Buildings and Fixtures,	180996 99
7. Repairs and Renewals of Docks and Wharves,	
8. Repairs and Renewals of Telegraph,	21736 98
9. Stationery and Printing,	9359 64
10. Other Expenses,	12120 61
TOTAL,	2777353 70
MAINTENANCE OF EQUIPMENT:	
11. Superintendence,	120638 55
12. Repairs and Renewals of Locomotives,	1599733 26
13. Repairs and Renewals of Passenger Cars,	237354 31
14. Repairs and Renewals of Freight Cars,	914910 46
15. Repairs and Renewals of Work Cars,	44059 30
16. Repairs and Renewals of Marine Equipment,	19381
17. Repairs and Renewals of Shop Machinery and Tools,	113117 40
18. Stationery and Printing,	9637 39
19. Other Expenses,	41365 85
TOTAL,	3081223
CONDUCTING TRANSPORTATION:	
20. Superintendence,	314492 57
21. Engine and Roundhouse Men,	1713621 65
22. Fuel for Locomotives,	2089328 71
23. Water Supply for Locomotives,	115646 35
24. Oil, Tallow, and Waste for Locomotives,	81289 13
25. Other Supplies for Locomotives,	50164 86
26. Train Service,	1158139 40
27. Train Supplies and Expenses,	222179 44
28. Switchmen, Flagmen, and Watchmen,	720572 57
29. Telegraph Expenses,	370264 13
30. Station Service,	793823 78
31. Station Supplies,	308508 36
32. Switching Charges—Balance,	
33. Car Per Diem and Mileage—Balance,	154687 27
34. Hire of Equipment—Balance,	48714 44
Total carried forward,	7855693 68

OPERATING EXPENSES—CONTINUED.

ITEM.	AMOUNT.
CONDUCTING TRANSPORTATION—Continued.	
Total brought forward,	7855693685
35. Loss and Damage,	2446790
36. Injuries to Persons,	2165403
37. Clearing Wrecks,	560933
38. Operating Marine Equipment,	
39. Advertising,	501425
40. Outside Agencies,	278267.79
41. Commissions,	
42. Stock Yards and Elevators,	273991
43. Rents for Tracks, Yards, and Terminals—Page 47, B,	967763
44. Rents of Buildings and other Property,	121529
45. Stationery and Printing,	1187631
46. Other Expenses,	1700477
TOTAL,	9152005.32
GENERAL EXPENSES:	
47. Salaries of General Officers,	134200.98
48. Salaries of Clerks and Attendants,	3615997.87
49. General Office Expenses and Supplies,	131437.94
50. Insurance,	73793.73
51. Law Expenses,	87408.22
52. Stationery and Printing (General Offices),	58047.27
53. Other Expenses,	96143.90
TOTAL,	954779.91
RECAPITULATION OF EXPENSES:	
54. Maintenance of Way and Structures,	2777333.40
55. Maintenance of Equipment,	3051012.23
56. Conducting Transportation,	9152005.32
57. General Expenses,	954779.91
GRAND TOTAL,	15965.16186
PERCENTAGE OF EXPENSES TO EARNINGS—ENTIRE LINE, 74.23	
OPERATING EXPENSES—STATE OF KANSAS,	
Maintenance of Way and Structures,	1425208.08
Maintenance of Equipment,	1767278.74
Conducting Transportation,	4235165.53
General Expenses,	440001.22
TOTAL,	8056004.57
PERCENTAGE OF EXPENSES TO EARNINGS—KANSAS, 76.85	

MILEAGE.

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	482.11	652.15	2073.54	224.15		5.67	349.62	—	15.94	341.68
Miles of second track,	23.53	44	9.13				33.10			33.10
Miles of third track,	1.46	33					1.79			1.79
Miles of fourth track,										
Miles of yard track and sidings,	28.34	18.25	2.78.33	68.89			81.06.1		18.62	62.99
TOTAL MILEAGE OPERATED (All Tracks).	790.24	833.17	2361.00	293.04		5.67	4337.12		203.56	4073.89

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Missouri	284.74	450.53	141.57	64.63		3.07.5	97.22.4	—	5.89	93.35.0
Kansas	94.50	82.76	1630.21	159.50		23.45	1990.42	—	9.95	1957.02
Nebraska	102.87	118.56	14.964			5.47	376.84	—		371.37
Colorado			15.212				15.212	—		15.212
TOTAL MILEAGE OPERATED (Single Track).	482.11	652.15	2073.54	224.15		5.67	349.162	—	15.94	341.601

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
Missouri	284.74	450.63		735.27	—	3.79	731.48	
Kansas	94.50	82.76		177.26	—		177.26	
Nebraska	102.87	118.86		221.73	—		221.73	
TOTAL MILEAGE OWNED (Single Track).	482.11	652.15		1134.26	—	3.79	1130.47	

MILEAGE—STATE OF KANSAS.

A. MILEAGE OF ROAD OPERATED (ALL TRACKS).

LINE IN USE.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	9450	8276	163021	15950		2345	199042	—		
Miles of second track,										
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings, *	4439	2509	22698	3025			32671	—		
TOTAL MILEAGE OPERATED (ALL TRACKS).	13589	10785	185719	18975		2345	231713			

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF KANSAS.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Kansas.	9450	8276	163021	15950		2345	199042	—		
TOTAL MILEAGE OPERATED (SINGLE TRACK).	9450	8276	163021	15950		2345	199042	—		

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF KANSAS.	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DUPING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
Kansas	9450	8276		17726	—			
TOTAL MILEAGE OWNED (SINGLE TRACK).	9450	8276		17726	—			

TAXES AND ASSESSMENTS OF ALL KINDS.

A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Missouri	2,191,968							2,191,968
Kansas	467,678	71						467,678 71
Nebraska	83,423	74						83,423 74
Colorado	43,097	90						43,097 90
TOTAL,	$3,392,03							$3,392,03

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
TOTAL,								

465 STATE OF KANSAS, *Shawnee County, ss:*

I, E. C. Shiner, Secretary of the Board of Railroad Commissioners of the State of Kansas, hereby certify the above and foregoing to be a true and correct transcript of that portion of the annual report of the Missouri Pacific Railway and Branch Lines to the Board of Railroad Commissioners of the State of Kansas, for the year ending June 30th, 1906 relating to capital stock, funded debt, income account, earnings from operation, operating expenses, mileage owned and operated and taxes.

In witness whereof, I have hereunto set my hand and affixed the seal of said Board this 9th day of December, A. D. 1907.

[Seal Board of Railroad Commissioners, State of Kansas.]

E. C. SHINER, *Secretary.*

466 No. 483.

Filed September 14, 1905.

Passenger-train Service.

CITIZENS ALONG THE LINE OF THE MADISON BRANCH OF THE MO. PAC. RLY.

vs.

MO. PAC. RLY. CO.

The citizens along the line of the Madison branch of the Missouri Pacific railway, running from Madison, Kan., to the Kansas and Missouri state line, allege that said respondent fails to maintain proper passenger-train service on said line, and asks the Board to accord such relief in the premises as may be just and proper.

A copy of said complaint was transmitted to the management of the respondent company, and, upon receipt of answer and the joining of issues, the Board set October 25, 1905, at Blue Mound, Kan., as the time and place for taking of testimony in the case, and notified interested parties of action taken.

The Board met at Blue Mound, Kan., on said date, and entered upon a hearing of said action, and, after hearing the evidence, argument of counsel, and being fully advised in the premises, made the following finding and order:

Now, on this 7th day of December, 1905, after hearing the evidence and argument of counsel in the above-entitled action, the Board finds that during the years 1902 and 1903, when the respondent railway company operated a passenger-train on said Madison branch of its line, the said passenger-train was operated at a loss, and there was no testimony introduced at this hearing that the train, if put on as asked for by the petitioners, could be operated at a profit to the respondent company. The Board believes that the people along the line of the Madison branch of said company are entitled to better passenger service than they are now receiving, and it has been represented to the Board by officers of said company that

the respondent is constructing motor-cars for establishment on its branch lines that can be operated at a much less expense than steam service.

It is therefore ordered by the Board that, on or before the 1st day of May, 1906, a motor passenger-car service be put on and operated on said Madison branch, from Madison, Kan., to the Kansas and Missouri state line, and in the event said railroad company is unable at that time to put on a motor-car passenger service, a regular steam passenger-car service be forthwith put on and operated.

The respondent company failed and refused to obey the above order of the Board, and mandamus action has been brought in the supreme court.

467–518 The Kansas & Colorado Pacific Railway Company.

History.

The Kansas & Colorado Pacific Railway Company was organized December 27, 1890, by articles of consolidation filed in the office of the secretary of state of the state of Kansas. It was organized under the laws of the state of Kansas, by authority of an act of the legislature of the state of Kansas approved February 29, 1889, Session Laws of Kansas, 1889, chapter 196, page 290 (General Statutes of Kansas, 1889, section 1268).

The constituent companies of the consolidation forming the Kansas & Colorado Pacific Railway Company are twelve in number, each formed by articles of association filed in the office of the secretary of state of the state of Kansas on the dates set against the name of each company as below stated, viz.: The Council Grove, Osage City & Ottawa Railway Company, January 13, 1886; Topeka, Salina & Western Railroad Company, November 23, 1880; the Missouri Pacific Railway Company in Kansas, September 17, 1885; the Kansas & Colorado Railroad Company, January 6, 1883; Denver, Memphis & Atlantic Railway Company, October 11, 1883, and amendments to this charter filed November 17, 1884, and January, 1886; the Council Grove, Smoky Valley & Western Railway Company, June 8, 1886; Kansas, Nebraska & Dakota Railway Company, August 14, 1885; Salina, Sterling & El Paso Railroad Company, December 17, 1883; the Wichita & Colorado Railway Company, June 27, 1885, and amendment filed April 29, 1886; the Verdigris Valley, Independence & Western Railroad Company, May 6, 1885; the Grouse Creek Railway Company, April 2, 1887; the Interstate Railway Company, itself a consolidated company, formed by articles of consolidation filed in the office of the secretary of state of the state of Kansas July 3, 1890, the constituent companies of which consolidation being the St. Louis & Emporia Railroad Company, which was formed by articles of association filed in the office of the secretary of state of the state of Kansas February 2, 1886, and the Interstate Railroad Company, which was formed by articles of association filed in the office of the secretary of state of the state of Kansas August 7, 1881.

Consolidation by purchase: Conveyance to the Kansas & Colorado Pacific Railway Company by deed, dated July 1, 1891, of the railroad owned by the Fort Scott, Wichita & Western Railway Company (organized under the general railroad laws of Kansas July 20, 1887).

The lines of the Kansas & Colorado Pacific Railway Company are operated by the Missouri Pacific Railway Company.

Organization.

Directors.	Address.	Expiration of term.
George J. Gould	New York	May, 1907.
C. S. Clark	St. Louis	"
D. S. H. Smith	"	"
J. H. Richards	Fort Scott, Kan.	"
C. E. Benton	"	"
Geo. O. Bacon	"	"
A. H. Webb	Wichita, Kan.	"

Total number of stockholders at date of last election: 156.

Date of last meeting of stockholders for election of officers: May 17, 1906.

Post-office address of general office: Fort Scott, Kan., and New York city.

Officer to whom correspondence regarding this report should be addressed: S. B. Schuyler, General Auditor, Missouri Pacific building, St. Louis, Mo.

Officers.

Title.	Name.	Location of office.
President	Geo. J. Gould	New York.
Vice-president	C. S. Clark	St. Louis.
Secretary and Treasurer	A. H. Calef	New York.
Assistant Treasurer	F. M. Hickman	St. Louis.
Assistant Secretary	F. W. Irland	"
" "	J. H. Richards	Fort Scott, Kan.
General Auditor	S. B. Schuyler	St. Louis.
Assistant General Auditor	E. M. Curtis	"

Comparative General Balance-Sheet.

June 30, 1905.	Assets.	June 30, 1906.	Year ending June 30, 1906.	
			Increase.	Decrease.
$49,030,100 00	Cost of road	$49,030,100 00		
1 00	Stocks owned	1 00		
13,432 33	Cash and current assets	13,433 33		
1,775,500 00	Sundries	1,775,500 00		
21,003,879 00	Profit and loss	22,467,599 00	$1,463,720 00	
$71,822,913 33	Grand totals	$73,286,633 33	$1,463,720 00	
	Liabilities.			
$25,498,100 00	Capital stock	$25,498,100 00		
23,532,000 00	Funded debt	23,532,000 00		
20,915,618 34	Current liabilities	22,379,338 34	$1,463,720 00	
101,654 99	Accrued interest on funded debt, not yet payable	101,654 99		
1,775,500 00	Other liabilities	1,775,500 00		
$71,822,913 33	Grand totals	$73,286,633.33	$1,463,720 00	

* * * * * * *

519 In the Supreme Court of the State of Kansas.

No. 14999.

THE STATE OF KANSAS *ex Rel.* ATTORNEY GENERAL, Plaintiff,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY, Defendant.

Findings of Fact.

1. The Board of Railroad Commissioners, upon complaint made and filed September 14, 1905, by citizens along the Madison branch of the Missouri Pacific Railroad to require said company to operate a passenger train on said branch, and after notice and hearing, did, on December 7, 1905, make and enter an order as follows:

"Now, on this 7th day of December, 1905, after hearing the evidence and argument of counsel in the above-entitled action, the Board finds that during the years 1902 and 1903, when the respondent railway company operated a passenger-train on said Madison branch of its line, the said passenger train was operated at a loss, and there was no testimony introduced at this hearing that the train, if put on as asked for by the petitioners, could be operated at a profit to the respondent company. The Board believes that the people along the line of the Madison branch of said company are entitled to better passenger service than they are now receiving, and it has

been represented to the Board by officers of said company that the respondent is constructing motor-cars for establishment on its branch lines that can be operated at a much less expense than steam service.

It is therefore ordered by the Board that, on or before the 1st day of May, 1906, a motor passenger-car service be put on and operated on said Madison branch, from Madison, Kan., to the Kansas and Missouri state line, and in the event said railroad company is unable at that time to put on a motor-car passenger service, a regular steam passenger car service be forthwith put on and operated."

Notice of said order was duly served upon the defendant-company, but the same has not been obeyed, nor have any proceedings
520 been commenced to set the order aside.

This action to enforce the order was commenced May 24, 1906.

2. The Madison line, as built and operated, extends from Monteith Junction, Missouri, to Madison, Greenwood County, Kansas, a distance of 108 miles, eighty-nine miles of which are within the state of Kansas; but trains have been run from Butler, Missouri, on account of there being no terminal facilities at Monteith Junction. The distance from Monteith Junction to Butler is about three miles. At Monteith Junction the Madison line connects with the Joplin line of the Missouri Pacific, giving connections to Kansas City, St Louis and other points North, South and East.

3. This line of road is owned by the Kansas & Colorado Pacific Railway Company, a company formed in January, 1891, by the consolidation, under Kansas laws, of twelve other railroad companies, among them being The Inter-State Railway Company, which was in turn a consolidated company, formed by articles of consolidation filed in the office of the Secretary of State, in July 1890, the constituent companies being The St. Louis & Emporia Railroad Company and The Inter-State Railroad Company. The Kansas & Colorado Pacific Railway Company is operated by the defendant company as a part of its system and has been so operated for a number of years.

4. The line of road traverses, in Kansas, the counties of Linn, Anderson, Coffey and part of Greenwood. When the road was constructed, various townships in those counties voted and issued bonds to aid in the construction, the aggregate amount being $199500.00. Capital stock, equal in amount to the bonds was issued to the townships, respectively, and seems to be still held by them.

5. The railroad companies constructing the road, issued 6% bonds, secured by mortgage on the road, to the amount of $1,622,000.00, and delivered them to the construction company to pay for the cost of the work, amounting to $1,095,000.00. Afterward the Missouri Pacific Railway Company acquired possession and ownership of these bonds and a majority of the capital stock, paying therefor $1,095,000.00. The capital stock was $1,622,800.00. I am unable to find from the evidence submitted, just in what manner the St. Louis & Emporia and the Inter-State railroads were con-
521 nected in constructing the road. Some of the township bonds were voted to one company and some to the other.

The road has always been operated by the Missouri Pacific Company under a lease. No interest has been paid on the railroad bonds.

6. The Madison line runs in an Easterly direction from the Western terminus at Madison, and connects with eight other lines of road between Madison and the state line. These intersecting lines generally bear in a northerly or northeasterly direction, furnishing more direct routes than the Madison line affords for travel and traffic to and from Kansas City, the nearest and most natural market for the products of that part of the state.

At Madison is a line of the Santa Fe running from the South to Emporia where it connects with the main line of that road.

At Gridley, 14 miles East of Madison, a branch of the Atchison, Topeka and Santa Fe Railway Company connects with the Madison line, running thence in a northeasterly direction through Ottawa to Kansas City.

Near Le Roy it crosses the Missouri, Kansas & Texas line, which runs northwest through Emporia to Junction City, Kansas.

At Le Roy, 15 miles East of Gridley, the road crosses another road operated by the Missouri Pacific Railway Company, and also a part of the Kansas & Colorado Pacific Railway Company, which comes from Southern points and runs in direct line from Le Roy in a northeasterly direction to Kansas City.

At Colony, 16 miles East of Le Roy, the line crosses another line of the Santa Fe, running North to Ottawa, Lawrence and Kansas City.

At Kincaid, 12 miles East of Colony, the line crosses another line of the Missouri, Kansas & Texas road which runs in a northerly direction to Kansas City.

At Blue Mound, 7 miles East of Kincaid, the road crosses another line running from Fort Scott to Topeka, which was also one of the constituent parts of the Kansas & Colorado Pacific Railway Company.

At Pleasanton, 19 miles East of Blue Mound, the St. Louis & San Francisco road is crossed, this road running in a northerly direction from the South to Kansas City. This point is about 6 miles west of the State line.

522 7th. There are no large towns on this line, nor county seats, except Mound City, the county traversed being largely agricultural. The principal shipments of freight from this part of the state consist of grain, live stock and hay. There are some manufactured goods for shipment, but of no large quantity, though this output is yearly increasing in volume.

8. Because of the advantages which other lines have in distance to trading centers, and in directness of communication, through passenger traffic would not naturally seek the Madison line. Its location and connections necessarily place it at a serious disadvantage for anything more than local passenger business, no matter what trains may be operated. This line could be operated to connect with the defendant's trains running from Le Roy to Kansas City, if proper connections were arranged, so as to encourage traffic and

travel by that route, but to what extent any improvement over the past could thus be secured is merely conjectural.

9. From July 1, 1903, to July 1, 1905, passenger and freight trains were run separately over this line, one passenger and one freight running each way every day—except perhaps Sunday. Since July 1, 1905, only one mixed train has been run each day each way, a train leaving each end of the line in the morning about eight o'clock and scheduled to arrive at the other end about five in the evening. When the passenger train was on, the scheduled time for the run was five hours. The mixed train carries a passenger coach, for the accommodation of passengers. Close connections with trains on the Joplin line were not made at Monteith Junction and Butler, which tended to discourage through travel, but the time scheduled for the Madison line trains was probably best to accommodate the local travel on that line.

10. The evidence does not furnish data, made up in the same way, of earnings and expenses for the same periods of time, in the operation of this line. Consequently, only an approximation can be made in a comparison of earnings and expenses. Part of the time the Madison line was an accounting division by itself and correct accounts of receipts and expenditures *ought to be available*. They have been furnished for part of the expenses, but not for the
523 earnings, and the latter, especially as to freights, are approximated by pro rating on a mileage basis. Such approximation is inaccurate and in some instances at least has been made up for this case by a method which is different from that ordinarily used by the company. In the matter of freight earnings, it has been and still is the rule of the defendant company, in making a division of freight earnings between any particular line and the other lines, to apportion such earnings on a mileage basis, but the line on which the shipment originates or where it terminates, is given a minimum mileage of fifty miles where there is a long haul on other lines and a short haul—12 or 20 miles for example—on the line that receives or delivers the shipment. This rule was disregarded in making up the tables in evidence in this case, so that they do not correctly show what freight earnings should be credited to the Madison line during any particular period.

In the matter of the earnings of passenger trains, the moneys received from express companies for the carriage of express matter, is an approximation based upon business done in 1889 and 1890, which cannot be said to be any proper standard of comparison for this case.

11. Making estimates upon such tables and approximations, I find that during one of the periods covered by the evidence—from July 1, 1903, to May 1, 1905,—when both passenger and freight trains were operated, the earnings were as follows:

Passenger trains	$47,984.12
Freight trains	55,924.00
Total	$103,908.12

During the same time the expenses were as follows:

Agents' salaries and commissions	$14,829.00
Passenger crews and train expenses	25,613.01
Freight crews	40,735.55
Maintenance of way, etc.	62,680.83
General charges	30,000.00
Total	$173,858.42

Showing a loss during that period in actual operation of the line of $69,950.30.

524 The passenger earnings above stated are ascertained, not including the estimate of the express business as stated in the 10th finding, almost wholly from actual accounts of the passenger train business on this line. The freight earnings are simply estimated by taking the earnings of the Kansas & Colorado system and apportioning to the Madison line its pro rata on a mileage basis. The actual freight earnings are probably considerably greater than stated. In maintenance of way are included the cost of repairs of track, bridges, depots, etc., and all the general work to keep up the road. The $30,000.00 general charges is the approximated pro rata which this line should bear of such expenses as are common to the whole system, as officers', superintendents' and employees' salaries, necessary in the general management of the roads.

12. The earnings of the Kansas & Colorado Pacific Railway Company for the time named in the last finding were $10,673,778.71, and the expenses of operation and maintenance $9,043,107.44, showing net earnings of $1,630,671.27. For the year ending April 1, 1906, the freight earnings and expenses on the Kansas & Colorado Pacific lines were, as approximated on mileage basis:

Earnings	$6,146,283.82
Expenses	5,162,679.96
Net earnings	$983,603.86

13. The total freight earnings from freight traffic which originated or terminated on the Madison line, or which passed over some part of that line, amounted to the sum of $125,947.79, from May 1, 1905, to April 1, 1906. Of this, there has been apportioned to the Madison line, for the purpose of showing in this case the freight earnings thereof, the sum of $22,369.39. This amount is obtained by giving to the Madison line the proportion of the earnings which the haul on that line bears to the entire haul on all the Missouri Pacific lines. Such apportionment does not, however, make a true and just division of earnings to which this line is entitled, and the evidence furnishes no data by which a proper division of earnings can be determined. Of the $125,947.79 thus earned by the defendant's several lines, at least two-thirds of that sum was ob-
525 tained from inter-state traffic.

14. From May 1, 1905, to April 1, 1906, except in May

and June 1905, only a mixed train was run on the line in question. In that time the estimated earnings were:

Passenger	$18,954.19
Freight	32,900.00
	$51,854.19

During the same time the estimated expenses were:

Passenger	$37,059.77
Freight	111,767.00
	$148,826.77

Showing a loss for the eleven months of $96,972.58.

15. The earnings of the lines in Kansas operated by the defendant company, for the year ending June 30, 1906, were $10,483,311.59, and the operating expenses $8,056,004.59.

16. The Missouri Pacific Railway System includes all these lines of road and defendant has general management and control of all. As a system, the Missouri Pacific makes fair net profits, for the year ending June 30, 1906, the gross earnings being $21,506,592.41 and the expenses $15,965,161.82.

17. There are 1990 miles of single track operated by the Missouri Pacific Railway Company in Kansas. The total number of miles of single track operated by the Missouri Pacific Railway Company over its entire system *of* 3492. The mileage of single tracks of the Kansas & Colorado Pacific is 1434 miles.

18. The passenger earnings of the lines in Kansas operated by the defendant company, for the year ending June 30, 1906, averaged $1331.60 per mile of road, as shown by the sworn report of the company filed with the Board of Railroad Commissioners. In the same time the freight earnings of such lines were $3,823.08 per mile of road.

19. All the estimates made in the foregoing findings of earnings and expenses include both state and inter-state traffic. No method of separation is possible on the evidence.

526 20. There are no terminal facilities nor railroad connections at the Kansas-Missouri state line, nor nearer than Monteith Junction, and the road, to be operated with any degree of success as a part of the Missouri Pacific System, must have trains running from Madison to Monteith Junction in Missouri, the latter point being about sixteen miles east of the state line. Since the construction of the road, the Madison branch trains have been operated from Madison, Kansas to Monteith Junction or Butler.

21. The estimated cost of operation per mile for a passenger train is sixty cents. That includes its proportionate part of all expenses and charges. The actual monthly cost of a passenger train crew, together with fuel, water, lighting, heating and care of cars, is about $1,100.00. Other expenses are maintenance of agencies, roadways, repair of engines and cars, which are common to all trains.

22. The evidence shows that motor cars (gasoline engine power),

have been operated, for a year or more by some railroad companies, with fair success, and at a cost of operation much less than necessary in case of the ordinary passenger train. Such motor cars require a crew of only two men, and for fuel consume about half a gallon of gasoline per mile. Their use and operation are feasible on such a line as the one in question, and would furnish a service probably adequate to accommodate all passenger travel on the line.

23. During the time the defendant company maintained separate passenger service on the Madison line, it had the contract to carry the government mails thereon, for which it was paid the sum of $5,000.00 yearly. Under the mixed train service, the government does not use the railroad for mail service to points on this line.

Conclusions of Law.

1. The defendant is not estopped from setting up and making the several defenses contained in the return to the alternative writ, merely because it instituted no proceedings to set aside the order of the Board of Railroad Commissioners respecting passenger service.

527 2. In determining whether or not separate passenger service should be given on the Madison branch, all the revenues—passenger and freight—derived from the operation of that line, should be considered. If the communities through which the road runs furnish a highly remunerative freight traffic, so that any deficiency in the passenger traffic, when taken by itself, is made up, and it is not unreasonable to require passenger and freight trains to be operated separately as they usually are, such service should be maintained.

3. The finding of the board that during the years 1902 and 1903 the passenger train was operated at a loss, does not shift the burden of proof in this case onto the State, when the further finding is made that the people along the line of the road are entitled to a better service than that afforded by only a mixed train, and the defendant company is ordered to provide separate passenger service. It will be presumed that the order was based upon a consideration of the general traffic and revenues of this line of road.

4. Since the defendant has combined this line of road, for operation, management and accounting, with the Kansas & Colorado Pacific Railway Company lines, so as practically to constitute the twelve lines embraced by that company a single unit for purposes of operation, and no definite ascertainment of the actual earnings of the Madison line can be made, a separate passenger service should be maintained if the net earnings of the Kansas & Colorado Pacific Railway justify such service.

5. The Madison line, if dependent upon its own traffic and not used as a feeder to other Missouri Pacific lines, would not pay the cost of maintaining separate passenger and freight trains, and an order for such service would not be reasonable. But considered as a part of the Missouri Pacific System, I think a requirement of such service would not be unreasonable.

6. The burden of proof being upon the defendant, it has failed to show that the traffic—passenger and freight—originating, or terminating, on the Madison line, does not contribute to
528–539 the earnings of the other lines of the system operated by defendant company in sufficient amount to entitle the people along the line to a better service, and has failed to show that the order for such service is not a reasonable requirement.

7. The Madison line is inter-state in construction, connections and operation, the running of trains from Madison to Monteith Junction or Butler being necessary in order to give the operating company any reasonable opportunity to meet expenses of such operation. It would be unreasonable to require a separate passenger train to be operated on this line only within this state.

8. As the state can exercise no control over inter-state operation of railroads, an order cannot be made for the running of trains from Monteith Junction to any point in Kansas. Such order must emanate from the Inter-State Commerce Commission.

9. For the reasons stated in the last two preceding conclusions, the writ asked for cannot be allowed.

T. F. GARVER, *Referee.*

Each party is allowed exceptions to each of the foregoing findings and conclusions in order that all questions may be reviewed and considered by the Supreme Court.

T. F. GARVER, *Referee.*

(Endorsed:) No. 14999. In the Supreme Court of the State of Kansas. The State of Kansas *ex rel.*, Plaintiff, *vs.* The Missouri Pacific Railway Company, Defendant. Referee's Findings & Conclusions. Filed May 27, 1907. D. A. Valentine, Clerk Supreme Court. T. F. Garver, Topeka, Kansas, Referee.

* * * * * * *

531 Be it further remembered, that afterwards on the 9th day of November A. D. 1907, the same being one of the regular judicial days of the July 1907 term of the supreme court of the state of Kansas, said court being in session at its court room in the city of Topeka, the following proceeding among others was had and remains of record in words and figures as follows, to-wit:

532 In the Supreme Court of the State of Kansas.

Journal Entry of Judgment.

No. 14999.

THE STATE OF KANSAS *ex Rel.* ——— ———, Plaintiff,

vs.

THE MO. PAC. RLY. CO., Defendant.

This cause comes on for decision, and thereupon it is ordered and adjudged that judgment herein be entered in favor of the plaintiff

and against the defendant, and that the peremptory writ of mandamus issue against the defendant commanding it, viz:—The Mo. Pac. Rly. Co. immediately upon the receipt of the writ of mandamus to instal a motor and passenger car service upon said Madison line of said railroad from Madison Kansas to the Kansas and Missouri State line; and in the event that the Mo. Pac. Rly. Co. are unable to put on a motor-car passenger service, immediately to instal and operate a regular steam, separate passenger train service upon said line. It is further ordered and adjudged that the defendant pay the costs of this proceeding in this court taxed at $— and hereof let execution issue.

533 And also on the same day to-wit:—the 9th day of November A. D. 1907, there was filed in the office of the clerk of the supreme court of the state of Kansas, the syllabus and opinion of the court, which syllabus and opinion is in words and figures as follows, to-wit:

534 No. 14,299.

THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, &c.,

v.

THE MISSOURI PACIFIC RAILWAY COMPANY.

Original Proceeding in Mandamus.

Writ Allowed.

Syllabus by the Court, Porter, J.

1. The statute creating a board of railroad commissioners (chapter 286, Laws of 1901, and the acts supplementary and amendatory thereto, being chapter 391, Laws of 1903, and chapter 340, Laws of 1905), is not in violation of the constitutional requirement that the legislative, executive and judicial departments of government shall be kept separate.
2. The act does not delegate to the board of railroad commissioners legislative powers. The legislature in the exercise of its power to regulate and control public corporations, such as common carriers, may delegate to a board of railroad commissioners certain functions administrative in character and which can not well be performed by the legislature itself.
3. The act does not confer upon the board executive or judicial powers although the board is required to exercise judgment and discretion and to make orders for the regulation and control of railroads and other common carriers.

535 4. The act is not invalid because the constitution does not specifically provide for the creation of a board of railroad commissioners. The subjects upon which the legislature may enact laws are not enumerated in the constitution.

5. The legislature has the power to regulate and control the operation of railroads. The question of the extent of the control

and regulation must be left to the legislature to determine, subject always to the constitutional guarantees for the protection of property.

6. The act creating such board applies solely to the business of railroads within the state, and is not designed to affect and does not apply to or regulate interstate commerce.

7. Nor is the act in question unconstitutional upon the ground that it provides for taking the property of persons or corporations without due process of law.

8. Defendant having been notified of a hearing before the board of railroad commissioners upon a complaint filed with such board, and having appeared before the board and participated in such hearing, can not claim that an order issued by the board after such hearing is not due process of law.

9. This court has jurisdiction of original proceedings in mandamus to compel obedience to an order made by the board of railroad commissioners. The power which the act confers upon
536 the court is not a legislative or nonjudicial power. It is a judicial power simply. In such a proceeding the only question to be determined by this court is whether such order is reasonable.

10. The provisions of section 11, chapter 340, Laws of 1905, making certain orders of the board conclusive after the lapse of thirty days from the time such orders shall be made, is a rule of evidence and not a limitation upon the right of defendant railroad company to offer evidence in defense of an action in mandamus to compel obedience to an order of the board. Defendant is not estopped in this action from offering evidence to show that the order of the board is unreasonable, by the failure to avail itself of the right to commence an action to vacate such order within thirty days.

11. The order of the board requiring defendant to operate separate passenger-trains is not unreasonable upon its face.

12. In mandamus proceedings in this court to compel obedience to an order of the board of railroad commissioners, the order of the board is *prima facie* reasonable, and the burden of proof is upon defendant to establish its unreasonableness.

13. Defendant failed to produce sufficient evidence to overcome the *prima facie* presumption that such order is reasonable.

14. The order of the board requiring defendant to operate separate passenger service within the state is in the exercise of its
537 police power to enforce local regulations necessary for the convenience, safety and comfort of the public, and is not an attempt to regulate interstate commerce, nor does it directly cast a burden upon such commerce.

All the Justices concurring.

A true copy.

Attest:

_____,

Clerk Supreme Court.

538 No. 14559.

THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, &c.,
v.
THE MISSOURI PACIFIC RAILWAY COMPANY.

Original Proceeding in Mandamus.

Writ Allowed.

The opinion of the court was delivered by PORTER, *J.*:

This is an original proceeding in mandamus to compel defendan to obey an order of the board of railroad commissioners requiriu it to install and operate a separate passenger train service on th Madison branch of its railway from the state line between Kansa and Missouri to Madison, Kansas. The order of the board of rail road commissioners was made on the 7th day of December, 1905 after a regular hearing previously held at Blue Mound, Kansas The hearing was upon a written complaint filed with the board, which defendant filed its answer. Defendant having refused t comply with the order, this proceeding was brought and the alterna tive writ issued May 24, 1906.

What is known as the Madison branch of defendant's railroad wa originally the Interstate railroad, chartered in 1885 by the state a a common carrier, under the name of the Interstate Railroad Com pany. Afterwards, in 1891, it was consolidated with eleven othe roads and became part of the Kansas, Colorado & Pacific Railway Company. It has been operated as a part of the Missouri Pacifi Railway Company for a number of years.

To the alternative writ an answer was filed which denied tha the company operated the Madison branch as a line of road wholly within the state of Kansas, and alleged that said branch is a par of the Missouri Pacific general system; that defendant maintains terminal facilities for the said branch at Butler, Mo., twenty mile east of the Kansas state line, where said branch connected with the main line of defendant's railroad, that the company has no
539 terminal facilities near the state line within the state of Kansas, and that the branch road could not be operated as a road within the state of Kansas without such terminal facilities to maintain which would involve the company in ruinous expense It also alleged that the order was unreasonable and confiscatory and that the company could not comply with it without great financial loss; that the entire revenue of the said road within the state of Kansas, including passenger and freight business, is insufficient to meet the expense and cost of operating said road within the state that from July 1, 1903, to April 30, 1905, it had maintained sep arate passenger train service upon said branch, but had been obliged to abandon the same and return to the mixed passenger and freight service because the total receipts of passenger and freight business during that period had proved wholly insufficient to meet the ex-

penses of operation. It was also alleged that compliance with the order of the board would compel defendant to divert its revenues from other lines and parts of its system outside the state of Kansas to the maintenance of separate passenger train service in the state, and that the extent of such additional cost would amount to a confiscation of its property.

After the issues were joined, the Honorable T. F. Garver was appointed referee. His report was filed May 27, 1907, and embraced findings of fact and of law. The referee found as a conclusion of law that the peremptory writ should not be allowed. Special reference will be made to these findings in another part of the opinion.

We have not attempted to state the allegations and averments of the alternative writ or those of the answer except in general terms. There is, however, no question arising on the pleadings except that the state contends that it is entitled to judgment on the pleadings because it appears that defendant railroad company failed to commence an action to vacate and set aside the order of the board within thirty days from the time such order was made, and that the
540 order of the board thereby became a final order barring the railroad company from all right to any defense to the alternative writ.

To this contention we do not agree. Section 11 of chapter 340, Laws of 1905, amending the general railroad law, provides that certain determinations and orders of the board shall be *prima facie* evidence in any action where they are offered as evidence, that is, *prima facie* evidence "of the reasonableness and justness of the classifications, rates and charges involved therein and of all other matters therein found and determined." It also provides that "after the lapse of thirty days from the time such determinations and orders shall be made, no suit then pending to set the same aside, and they remaining in full force and effect, such determinations and orders shall be held to be conclusive as to the matters involved therein." We understand these provisions to apply to certified copies of rates, rules, regulations and orders which section 11 authorizes the board to furnish upon the application of any person interested. The provision is a rule of evidence and not a limitation of the right of the railroad company to be heard in an action brought under section 5998, General Statutes of 1901, as this action is brought. Section 5998 makes it the duty of every railroad company to obey the reasonable orders of the board, and authorizes mandamus proceedings in the name of the state on the relation of any person interested, to compel compliance and obedience to such order. This and the following section (5999) must be construed together as creating the court procedure. The railroad company if dissatisfied with any order or decision of the board is given the right within thirty days thereafter to bring an action against the board in any court of competent jurisdiction to have the same vacated. Section 5999 also provides that the institution of such action by the railroad company shall in no way interfere with or prejudice the rights of the party or parties in interest from availing themselves of the remedies provided in the preceding section, and that during these thirty days no penal-

ties or forfeitures shall attach or accrue on account of the
541 failure of the company to comply with the order until the validity of the order has been finally determined by the supreme court in any proceeding in which the railroad company is a party. When both actions are pending at the same time the supreme court is authorized to stay all proceedings in the district court until the final determination of the matter in the supreme court.

Had the legislature intended to provide that the failure of the railroad company to institute proceedings to vacate an order should summarily cut off the right of the company to make any defense to the mandamus proceedings it certainly would have used language appropriate to manifest that intention.

We are aided in this construction by the fact that section 5998 which authorizes the mandamus proceeding also provides that the orders and determinations of the board shall be *prima facie* evidence of the matters therein stated and found, and particularly by the further provision that "the court may direct the railroad company affected thereby to comply with any part of any rule, order or regulation of the board, and may hold any part of the same unreasonable, and refuse to enforce such part, without affecting the part found to be reasonable and just." It must be obvious that this provision contemplates a trial in the supreme court of the question of the reasonableness of the order, and that the provision subsequently adopted by the amendment of 1905 has no reference to this kind of an action.

Defendant railroad company therefore was not estopped from offering proof of its defense in this action by its failure to avail itself of the right to commence an action to vacate the order of the board within thirty days.

Defendant attacks the constitutionality of the law creating the board of railroad commissioners (1) upon the ground that it attempts to delegate to the board legislative authority.

The exact question presented here has been decided so often by the courts of last resort, the subject has been so exhaustively
542 discussed and elaborated, and the field for original comment or suggestion has been reduced to such narrow limits, that very little is left but to repeat what others have said. In a majority of the states of the Union the legislatures have created commissions and conferred upon them the power to regulate and control the operation of common carriers, to fix rates and schedules for the transportation of passengers and freight, to hear and determine complaints of the people against the carrier and to act thereon, and the power to create such agencies, and to confer upon them these powers, has been repeatedly recognized and upheld by the Supreme Court of the United States.

Our constitution contemplates the complete separation of the three governmental powers as clearly as though it so declared in express terms.

In re Sims, Petitioner, 54 Kan. 1;
The State *v.* Johnson, 61 Kan. 803;
In re Davis, 58 Kan. 368.

The constitution vests all legislative power in a legislature consisting of a senate and house of representatives. It can not be doubted that the legislature is not authorized to delegate this legislative power. It may not confer upon any person, board or commission the power of determining what the law shall be. These propositions are elementary. Notwithstanding these well established maxims, the separation of the powers of government is complete only in theory. In *In re* Sims, *supra*, Mr. Justice Johnston in concurring uses this language:

"It is highly important to separate the legislative, judicial and executive functions, and that the officer of one department should not exercise the functions conferred upon another. Under our system, however, the absolute independence of the departments, and the complete separation of the powers is impracticable, and was not intended."

As early as 1871, in Coleman *v.* Newby, 7 Kan. 82, Justice Valentine said:

"While the legislature possesses all of the legislative power
543 of the state, and while it is true that they cannot delegate any portion of that power to any other body, tribunal, or person, yet it is generally found impracticable for them to exercise this power in detail. They may do so if they choose, or they may enact general provisions, and leave those who are to act under these general provisions to use their discretion in filling up the details. They may mark out the great outlines, and leave those who are to act within these outlines to use their discretion in carrying out the minor regulations."

And in Chicago & N. W. Ry. Co. *v.* Dey, 35 Fed. 866, Mr. Justice Brewer comments as follows upon the distinction theoretically and as applied to legislative acts conferring administrative powers:

"*Third.* While, in a general sense, following the language of the supreme court, it must be conceded that the power to fix rates is legislative, yet the line of demarkation between legislative and administrative functions is not always easily discerned. The one runs into the other. The law books are full of statutes unquestionably valid, in which the legislature has been content to simply establish rules and principles, leaving execution and details to other officers. Here it has declared that the rates shall be reasonable and just, and committed what is, partially at least, the mere administration of that law to the railroad commissioners. Suppose, instead of a general declaration that rates should be reasonable and just, it had ordered that the rates should be so fixed as to secure to the carrier above the cost of carriage 3 per cent. upon the money invested in the means of transportation, and then committed to the board of railroad commissioners the fixing of a schedule to carry this rule into effect, would not the functions thus vested in such a board be strictly administrative? While, of course, the cases are not exactly parallel, yet the illustration suggests how closely administrative functions press upon legislative power, and enforce the conviction that that which partakes so largely of mere administration should not

hastily be declared an unconstitutional delegation of legislative power.

544 *Fourth.* The reasonableness of a rate changes with the changed condition of circumstances. That which would be fair and reasonable today, six months or a year hence may be either too high or too low. The legislature convenes only at stated periods; in this state once in two years. Justice will be more likely done if this power of fixing rates is vested in a body of continual session than if left with one meeting only at stated and long intervals. Such a power can change rates at any time, and thus meet the changing conditions of circumstances. While, of course, the argument from inconvenience cannot be pushed too far, yet it is certainly a matter of inquiry whether in the increasing complexity of our civilization, our social and business relations, the power of the legislature to give increased extent to administrative functions must not be recognized."

In The State *v.* Johnson, *supra*, the act creating a court of visitation was held to be unconstitutional and void for the reason that in the powers conferred on that tribunal, legislative, judicial and administrative functions were so commingled and interwoven as to violate the constitutional requirement that the three departments of state be kept separate. It was said, however, in the opinion:

"Legislative power to prescribe rates which railway corporations may charge for carrying freight or passenger exists beyond question, and its exercise has been uniformly upheld by the courts. And this power the lawmakers may delegate to boards or commissioners, which has been frequently done. (Stone *v.* Farmers' Loan & Trust Co., 116 U. S. 307, 6 Sup. Ct. 334, 338, 1191, 21 L. Ed. 636.) The extent of the power is curtailed only by limitations placed upon it by the courts in the application of certain constitutional guaranties prohibiting the destruction of property rights vested in the owners of the railway. (Chicago, &c. Railway Co. *v.* Minnesota, 134 U. S. 418, 10 Sup. Ct. 462, 702, 33 L. Ed. 970.)"

The power conferred is uniformly held to be administrative in its character though the term "executive" has been used by the Supreme Court of the United States in defining it. It has, however,

545 no relation to or dependence upon the executive power spoken of as one of the three governmental powers, for its function is that of carrying into effect the legislative will, and in its operation it is a part of the legislative act. This is the doctrine of the Railroad Commission Cases, 116 U. S. 307, which is approved in Reagan *v.* Farmers' Loan & Trust Co. 154 U. S. 362. The language of Mr. Justice Brewer in the latter case is as follows:

"Such a commission is merely an administrative board created by the State for carrying into effect the will of the State as expressed by its legislation. Railroad Commission Cases, 116 U. S. 307. No valid objection, therefore, can be made on account of the general features of this act; those by which the State has created the railroad commission and entrusted it with the duty of prescribing rates of fares and freights as well as other regulations for the management of the railroads of the State."

Commenting upon the same objections to a similar law, the supreme court of Illinois in the case of C., B. & Q. R. R. Co. *v.* Jones, 149 Ill. 361, used the following language:

"The Act of 1873 is said to be invalid, because, instead of establishing reasonable maximum rates of charges, it is supposed to delegate the power to establish such rates to the railroad and warehouse commissioners. It has been held in a number of cases, that statutes, which create boards of commissioners and authorize them to make schedules of rates for railroad companies, are not invalid for the reason here urged. The doctrine of the cases is, that the functions of such boards are administrative rather than legislative; that the authority conferred upon them relates merely to the execution of the law; that a grant of legislative power to do a certain thing carries with it the power to use all proper and necessary means to accomplish the end, and that, as the reasonableness of rates changes with circumstances and legislatures cannot be continuously in session, the requirement, that the statute itself shall fix the charges, might preclude the legislature from the use of the agencies necessary to perform the duty imposed upon it by the constitution; in short,
546 that the legislature may authorize others to do things which it might properly, but can not conveniently or advantageously, do itself."

The supreme court of the United States in a very recent case has had occasion to pass upon the same question as applied to acts of congress conferring administrative functions upon individual officers. In Union Bridge Co. *v.* United States, 204 U. S. 364, the question arose over the validity of the River and Harbor Act of 1899 by which congress conferred upon the Secretary of War the power to determine when any railroad or other bridge over a navigable stream constituted an obstruction to navigation, and to notify the owners thereof to alter or remove the same. The question to be determined was whether the act was a violation of the constitution of the United States as delegating legislative and judicial powers to the head of an executive department of the government. The opinion reviews the authorities and quotes from Field *v.* Clark, 143 U. S. 649, as follows:

"Again, " 'The true distinction,' as Judge Ranney speaking for the Supreme Court of Ohio has well said, 'is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.' Cincinnati, Wilmington &c. Railroad *v.* Commissioners, 1 Ohio St. 77. In Moers *v.* City of Reading, 21 Pa. St. 188, 202, the language of the court was: 'Half the statutes on our books are in the alternative, depending on the discretion of some person or persons to whom is confided the duty of determining whether the proper occasion exists for executing them. But it cannot be said that the exercise of such discretion is the making of the law.' So, in Locke's Appeal, 72 Pa. St. 491, 498: 'To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the legislature of the power to act wisely for the public welfare whenever a law is

passed relating to a state of affairs not yet developed, or to
547 things future and impossible to fully know.' The proper distinction the court said was this: 'The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation.'"

Counsel for defendant calls particular attention to the case of Chicago &c. Railway Co. *v.* Minnesota, 134 U. S. 418, where the Minnesota law creating a railroad commission was held to be in conflict with the constitution of the United States. The particular reason why the Minnesota statute was held to be unconstitutional does not apply to this case. The Minnesota court construed the act to mean that the rates recommended by the commission should be not merely *prima facie* equal and reasonable, but final and conclusive as to what were reasonable and equal charges, and held that the law neither contemplated nor allowed any issue to be made or inquiry to be had as to their equality or reasonableness in fact, and that in a proceeding for mandamus under the statute there was no fact to traverse except the violation of the law in not complying with the orders of the commission. The supreme court declared that it was bound by the construction which the Minnesota court had placed upon the statute, and that so construed the act deprived the railroad company of its right to a judicial investigation by due process of law. No such objection can be urged to the Kansas act. In a specially concurring opinion in that case Mr. Justice Miller laid down certain fundamental propositions, among others the following:

"1. In regard to the business of common carriers limited to points within a single state, that state has the legislative power to establish the rates of compensation for such carriage.

"2. The power which the legislature has to do this can be
548 exercised through a commission which it may authorize to act in the matter, such as the one appointed by the legislature of Minnesota by the act now under consideration."

The following additional authorities and many others that might be cited sustain the doctrine that while the legislature may not delegate its strictly legislative powers, it may delegate authority to perform certain functions which are administrative in character and which can not well be performed by the legislature itself:

C. W. & Z. Rail Road Co. *v.* Commissioners of Clinton County, 1 Ohio St. 77;

Tilley *v.* The Railroad Commissioners, 4 Woods C. Ct. 427;

Georgia Railroad *et al. v.* Smith *et al.* Railroad Commissioners *et al.*, 70 Ga. 694;

Express Co. *v.* Railroad, 111 N. Car. 463;

State *v.* Chicago, Milwaukee & St. Paul Ry. Co., 38 Minn. 281, 37 N. W. 782;

State *v.* F., E. & M. V. R. R. Co., 22 Neb 313, 35 N. W. 118;

Chicago, B. & Q. R. Co. *v.* Iowa, 94 U. S. 155;
Peik *v.* Chicago & N. W. R. Co., 94 U. S. 164;
Chicago, M. & St. P. R. Co. *v.* Ackley, 94 U. S. 179;
Winona & St. Peter R. Co. *v.* Blake, 94 U. S. 180;
Stone *v.* Wisconsin, 94 U. S. 181;
Ruggles *v.* Illinois, 108 U. S. 536;
Illinois Central R. Co. *v.* Illinois, 108 U. S. 541;
Stone *v.* Farmers' Loan & Trust Co., 116 U. S. 307;
Stone *v.* Illinois Central R. Co., 116 U. S. 347;
Stone *v.* New Orleans & Northwestern R. Co., 116 U. S. 352;
Dow *v.* Beidelman, 125 U. S. 680;
Charlotte C. & A. R. Co. *v.* Gibbes, 142 U. S. 386;
Chicago & Grand Trunk R. Co. *v.* Wellman, 143 U. S. 339;
Pearsall *v.* Great Northern R. Co., 161 U. S. 646, 665;
549 Minneapolis & St. L. R. Co. *v.* Minnesota, 186 U. S. 257;
Minnesota & St. L. R. Co. *v.* Minnesota, 193 U. S. 53;
Chicago, B. & Q. R. Co. *v.* Illinois, 200 U. S. 561, 584;
Atlantic Coast Line *v.* Florida, 203 U. S. 256;
Seaboard Air Line *v.* Florida, 203 U. S. 261;
Commissioners *v.* A. C. L. Ry., 71 S. Car. 130.

In fact, the power of the legislature to delegate merely administrative functions in this manner has been so thoroughly established in the several states and so often held by the federal supreme court to apply to acts of Congress that the question is no longer an open one. The latest utterance of the United States Supreme Court upon the subject is in the case of Atlantic Coast Line *v.* N. Car. Corp. Com'n, 206 U. S. 1, in which Mr. Justice White, speaking for the court, uses the following language:

"The elementary proposition that railroads from the public nature of the business by them carried on and the interest which the public have in their operation are subject, as to their state business, to state regulation, which may be exerted either directly by the legislative authority or by the administrative bodies endowed with power to that end, is not and could not be successfully questioned in view of the long line of authorities sustaining that doctrine."

2. The next contention is, that the act is void because it confers upon the board a combination of legislative, executive and judicial powers. It is sought to bring the case within the doctrine declared by this court in The State *v.* Johnson, *supra*. In construing the act we start with the elementary proposition which all courts recognize, that every statute is presumed to be constitutional, and that no act of the legislature should be held to be unconstitutional unless its vice is apparent.

It must be observed that none of the powers which the act confers upon the board is authorized by the constitution to be performed by any other person or officer or tribunal. In the absence of
550 any limitation in the constitution, the legislature has full power to make laws and create agencies to carry them into effect.

The particular objection to the statute is, that section 5970, Gen-

eral Statutes of 1901, and sections 4 and 9, chapter 340, Session Laws of 1905, combine executive, legislative, judicial and administrative power. The first clause of section 5970 reads as follows:

"Whenever in the judgment of the railroad commissioners it shall appear that any railroad corporation or other transportation company fails in any respect or particular to comply with the terms of its charter or the laws of the state," etc.

In the same section it is provided that "said commissioners shall inform such corporation of the improvement and changes which they adjudge to be proper, by a notice thereof in writing * * * and if such orders are not complied with, the said commissioners, upon complaint, shall proceed to enforce the same in accordance with the provisions of this act as in other cases." It must be apparent that the use of the words "judgment" and "adjudge" in this section does not contemplate a judicial judgment. The commissioners do not exercise judicial power within the meaning of that word as used in the constitution. When we come to consider this section with the other provisions of the act we find that after determining that 'any change from the mode of operating its road and conducting its business is reasonable and expedient in order to promote the security, convenience and accommodation of the public," the board has no power to enforce an order to that effect. It may inform the company of the changes it desires made, but is powerless to compel any change until a hearing has been had "upon complaint," which means a full hearing of which the company has been notified and at which it may appear and participate; and even after this has been done the board can only order that changes shall be made. The order is not conclusive or binding upon the company and the company, if it see fit, may ignore it until the reasonableness and lawfulness of the order has been solemnly adjudged by
551 a court. There is no commingling of legislative, executive and judicial powers so apparent in the court of visitation act which conferred upon that tribunal the power to hear and decide, and to render a judgment and enforce it as a court. The finding and order of the board that a change in the operation of the road is expedient and reasonable, under section 5970, partakes of none of the characteristics of a judgment rendered by a court. As observed, the road may ignore it. When mandamus proceedings are brought to enforce it the order itself is only *prima facie* evidence of its reasonableness. Not being conclusive, it affects the railroad company only as a rule of evidence. The same may be said of sections 4 and 5 of the act of 1905. Section 4, expressly, and section 5, by necessary inference, require a hearing upon complaint, and the order when made has the same force as the order provided for in section 5970, and no other or greater effect. The functions of the board under this act are, as we have said, purely administrative, and the fact that in the performance of these functions the board must hear complaints and determine them does not make their acts judicial. It is not every act which requires the exercise of judgment and discretion which can be said to be judicial. Cooley in his work on torts, third edition, page 752, says:

"Official duties are supposed to be susceptible of classification under the three heads of legislative, executive and judicial corresponding to the three departments of government bearing the same designations; but the classification cannot be very exact, and there are many officers whose duties cannot properly, or, at least, exclusively, be arranged under either of these heads."

Where judgment or discretion is exercised as a mere incident to a ministerial power, it has never been held to be the exercise of judicial power within the meaning of constitutions which, like ours, provide for the separation of the three departments of government.

(Owners of Lands *v.* The People *ex rel.*, 113 Ill. 296;
Rich *v.* City of Chicago, 59 Ill. 295.)

552 In fact, the cases we have quoted from, *supra*, sustaining the power of legislatures to create boards of this character, and to confer upon them power to regulate and control common carriers, afford a sufficient answer to the contention that the power conferred is either legislative, executive or judicial.

3. A further objection to the validity of the act is because of the powers conferred upon this court. It is insisted, first, that it confers upon the court legislative powers, and, second, nonjudicial powers, which it is urged fall within neither the original or appellate jurisdiction granted to the court by the constitution.

Section 5998, General Statutes of 1901, authorizes mandamus proceedings in the supreme court to enforce the order of the board, and provides that the practice in such proceedings shall be as in other cases of mandamus. The particular objection upon which both of these claims are based is the provision that in such action "the court may direct the railroad company affected thereby to comply with any part of any rule, order or regulation of the board, and may hold any part of the same unreasonable, and refuse to enforce such part, without affecting the part found to be reasonable and just." It is said that when the court directs compliance with part of the original order it acts in a legislative capacity, or, if not in a legislative, at least, in a non-judicial capacity.

A similar contention was raised in Callen *v.* Junction City, 43 Kan. 627. The act under consideration authorized the judge of the district court to make findings of fact upon the petition of the city council of a city of the second class, desiring to add to the territory of such city. The judge was empowered to make findings as to the advisability of adding such territory, that is, whether the addition would be to the interest of the city, and also whether it would cause manifest injury to persons owning real estate within the territory sought to be added; whether it was advisable to add some por-
553 tions of the territory and unadvisable to add other portions. It was held that while the power to create and regulate municipal corporations and define their boundaries is purely legislative, that as the act authorized cities to enlarge their boundaries on certain conditions depending upon certain facts, the existence of those conditions was made by the act the subject of judicial inquiry and determination; that the city council in its discretion made the local regulation, but that the question as to whether that discretion has

been exercised within the limitations of the power delegated "is judicial question pure and simple." The doctrine of the case quot from has been followed in Huling *v.* The City of Topeka, 44 Ka 577;

Hurla *v.* Kansas City, 46 *id.* 738;
City of Emporia *v.* Randolph, 56 *id.* 117;
Eskridge *v.* Emporia, 63 *id.* 368;
Hutchinson *v.* Leimbach, 68 *id.* 37.

In the present case the legislature declares what the law shall and delegates to a commission the administrative power to carry t legislative will into effect on certain conditions depending upon fac and the question as to whether the discretion of the administrati body has been exercised within the limitations of the power de gated is a judicial question. If the conditions exist, if the order the board is reasonable and just, then the law declares that a du rests upon the railroad company to obey the order. The action mandamus lies to compel the performance of some official or c porate act by a public officer or corporation when no other adequat specific remedy exists. (Smalley *v.* Yates, Mayor, 36 Kan. 51 523.)

The doctrine of the decided cases is, that the inquiry by the cou as to the reasonableness of a schedule of rates or other regulatio whether made by the legislature or through a commission, is pure a judicial inquiry, and the legislature may expressly confer th pow upon the courts.

(Reagan *v.* Farmers' Loan & Trust Co., *supra;*
Smyth *v.* Ames, 169 U. S. 466;
554 St. L. & San Francisco Ry. Co. *v.* Gill, 156 U. S. 649, 657

In the statutes enacted by other states creating railroad commi sions similar provisions are made for the purpose of furnishing the railroad companies affected thereby due process of law. In t majority opinion by Mr. Justice Blatchford, in the Minnesota ca (134 U. S. 418), it is said:

"The question of the reasonableness of a rate of charge for tran portation by a railroad company, involving as it does the element reasonableness both as regards the company and as regards the pu lic, is eminently a question for judicial investigation, requiring d process of law for its determination."

To the same effect see *In re* Canada Northern Ry. and others, Federal 653.

There is nothing substantial in the second contention, *supra*, th the statute authorizes the court to try the whole controversy, an make such orders as the court may deem reasonable and just, an that the order when reviewed and revised becomes a judicial orde This court is not given authority by the act to make any rule, orde or regulation. Its authority is limited to the inquiry whether th order already issued is reasonable and just. The order may embrac separate and distinct things; it may seek to compel the doing of number of things, some of which the evidence may show would n be reasonable or just. If the things ordered to be done are in thei

nature such that they can be segregated, the judgment of the court may direct that some of the things ordered shall be performed, and refuse the peremptory writ as to the other things. The power to do this is analogous to the powers courts possess in passing upon the validity of an act of the legislature to uphold certain parts of the act, and to decide other portions to be invalid, where the several portions are not so associated and connected that the whole must stand or fall together.

4. It is contended that the act deprives defendant of its property without due process of law. Section 5999, General Statutes
555 of 1901, provides:

"Said board of railroad commissioners shall not make any regulation, order, finding or decision against any railroad company or enter into any investigation affecting any railroad company without giving such railroad company reasonable notice thereof and an opportunity to appear and be heard in respect to the same."

And section 5970 especially provides:

"The said commissioners, upon complaint, shall proceed to enforce the same in accordance with the provisions of this act as in other cases." Defendant having been notified appeared before the board and contested the matter in the manner provided for by the statute. (Commissioners *v.* A. C. L. Ry., 71 S. Car. 130; L. & N. R. Co. *v.* Schmidt, 177 U. S. 230.) In the latter case it is said:

"It is no longer open to contention, that the due process clause of the Fourteenth Amendment to the Constitution of the United States does not control mere forms of procedure in state courts or regulate the practice therein. All its requirements are complied with, provided in the proceedings which are claimed not to have been due process of law the person condemned has had sufficient notice and adequate opportunity has been afforded him to defend."

In the opinion declaring the Minnesota act void because of its failure to provide due process of law, Mr. Justice Blatchford uses this language:

"No hearing is provided for, no summons or notice to the company before the commission has found what it is to find and declared what it is to declare, no opportunity provided for the company to introduce witnesses before the commission, in fact, nothing which has the semblance of due process of law."

We have already referred to the court procedure provided for in the act by which any railroad company affected by the order of the board is given an opportunity to contest the matter. These provisions make it plain that no property rights of any railroad
556 company can be finally affected or disturbed until there has been a judicial determination of the reasonableness and justness of the order by a court of competent jurisdiction, and these provisions we think furnish due process of law.

5. It is further contended that the act is invalid because the constitution of the state does not grant to the legislature the power to create a board of railroad commissioners, and there is no reference in the constitution to such board. The Constitution of the United States does not mention a federal commission, but Congress under

the commerce clause has created over the validity of which has been repeatedly upheld by the federal Supreme Court. Where the Constitution has imposed no limitation upon the power of the legislature to enact laws their power is absolute and plenary.

(Leavenworth Co. *v.* Miller, 7 Kan. 479;
Harding *v.* Funk, 8 *Id.*, 315;
Wadsworth *v.* U. P. Rly. Co., 18 Colo. 600.)

In the case of Leavenworth Co. *v.* Miller, *supra*, Justice Valentine said:

"As the people have by the constitution clothed the legislature with all the legislative power of the state, * * * The state legislature have all the legislative power that the people of the state have power to give them."

Unless, therefore, it can be said that the act in question is not lawful for some other sufficient reason, the fact that the lawmaking power has enacted it into law is conclusive upon the courts, and where it does not appear to violate any express or implied provision of the constitution, the courts have no authority to declare it invalid because the constitution does not in express terms declare that the legislature shall have the power to enact it. The subjects upon which the legislature may enact laws are not enumerated in the constitution.

The legislature may legislate upon any and all subjects not prohibited by express words or by necessary implication. The courts look to the constitution to determine not what it authorizes but what it forbids.

(Township of Pine Grove *v.* Talcott, 86 U. S. 666, 676;
State, *ex rel.* Witter, *v.* Forkner, — Iowa —, 28 L. R. A. 206;
Cooley's Constitutional Lim., 7th ed., 128.)

557 6. Finally, a general objection is urged that the act places the entire control and regulation of railroads upon a political commission and deprives the owners of the roads of all control and regulation except to finance the companies to which the roads belong. The extent to which the legislature shall extend its control and regulation of common carriers rests in the discretion of the legislature alone except that it must of course be reasonable and just and must not deprive the owners of a fair and reasonable return upon their investment. (The State *v.* Johnson, 61 Kan. 803.) The private right of ownership of the railroads differs from that of ordinary property. It is a right which coexists with the power of the state to regulate the business on account of its public nature.

"A railroad is a public highway, and none the less so because constructed and maintained through the agency of a corporation deriving its existence and powers from the State. Such a corporation was created for public purposes. It performs a function of the State. Its authority to exercise the right of eminent domain and to charge tolls was given primarily for the benefit of the public. It is, therefore, under governmental control — subject, of course, to the constitu-

tional guarantees for the protection of its property." (Smyth *v.* Ames, 169 U. S. 466.)

See also Louisville and Nash. R'd Co. *v.* Kentucky, 183 U. S. 503;

N. C. Corp. Com. *v.* Atlantic Coast L. R. Co., 137 N. C. 1, 49 S. E. 191, 115 Am. St. 637, 669;

Atlantic Coast Line *v.* N. Car. Corp. Com'n, 206 U. S. 1.

But the extent of the powers conferred on the board by the entire act is not a subject of judicial inquiry in this proceeding. The particular order which defendant refuses to obey is one which clearly falls within the natural and legitimate scope of legislative control and regulation. It is therefore unnecessary to consider every provision of the act, or to inquire whether in some of them the legislature has exceeded its authority.

358 "Objections to the constitutional validity of statutes can be made only by those to whom the enactment applies and against whom attempts to enforce it are made." (The State *v.* Smiley, 65 Kan. 240.)

Since none of the reasons urged against the validity of the act are such as to render it, in our opinion, obnoxious to the constitution there remains the question whether the order of the board is reasonable and just. It is claimed by counsel for defendant that the order is upon its face unreasonable. It is as follows:

"Now, on this 7th day of December, 1905, after hearing the evidence and argument of counsel in the above entitled action, the board finds that during the years 1902 and 1903, when the respondent railway company operated a passenger-train on said Madison branch of its line, the said passenger-train was operated at a loss, and there was no testimony introduced at this hearing that the train, if put on as asked for by the petitioners, could be operated at a profit to the respondent company. The board believes that the people along the line of the Madison branch of said company are entitled to better passenger service than they are now receiving, and it has been represented to the board by officers of said company that the respondent is constructing motor-cars for establishment on its branch lines that can be operated at a much less expense than steam service."

The contention urged at length is, that by first finding that in 1902 and 1903 the operation of a passenger train was at a loss, and the further finding that no showing had been made to the board that if put on again in compliance with the request and complaint it could be operated with a profit, amount to a finding of fact that the order was unreasonable. But we agree with the finding of the referee that this does not necessarily follow as a conclusion from the foregoing findings. There is no finding that in 1902 and 1903 any revenues except those derived from passenger traffic were considered, and it needs no citation of authorities to show that even though the receipts of revenues from passenger traffic alone

359 were insufficient, yet if the combined revenues of freight and passenger traffic justified the expense of separate passenger-

trains, the company could not claim that it was unreasonable
require that separate passenger-trains should be operated.

We find it difficult, if not quite impossible, to consider the q
tion whether this order was or was not reasonable upon its f
without to some extent at least considering the character of
order itself. Suppose the order had required something ex
ordinary of defendant, as for instance, two passenger-trains d
each way, or that vestibule cars or reclining chair cars be put on
operated, it will hardly be denied that much less evidence would
required to overcome the *prima facie* showing or presumption
the order was a reasonable one than would be required in a
where the order only directs the railroad company to do that wh
every one naturally expects would be done, in view of the man
in which railroads have usually been operated. Since railro
were first introduced there has been much variation and there alw
will be in the character, kind and sufficiency of the service rend
the public, depending upon the public requirements, the locati
surroundings, and traffic of each particular railroad. What wo
be a reasonable kind of service and might be reasonably insis
upon by the public under one set of circumstances would not
reasonable under other and different circumstances. On the ot
hand, it is usual and customary wherever railroads are operated
provide one kind of service for passenger traffic and another
freight.

There is considerable force in the contention of the relator t
a railroad chartered as this was fails to comply with its charter o
gations if it only operates mixed trains and compels passengers
submit to the danger and inconvenience of that kind of serv
The charter of the Interstate Railroad Company, the obligations
which were assumed by defendant, authorized it to construct, ma
tain and operate a standard gauge railway.

560 Section 1322, General Statutes of 1901, provides that:

"Every railroad corporation in this state which now is
may hereafter be engaged in the transportation of passeng
* * * shall furnish sufficient accommodation for the transp
tation of all such passengers, baggage, mails, and express freight
shall within a reasonable time previous thereto be offered for tra
portation at the place of starting, at the junction of other roads, a
at the several stopping places."

That question was before the supreme court of Illinois in T
People *v.* St. L., A. & T. H. R. R. Co., 176 Ill. 512, 35 L. R. A. 6
In the opinion it is said:

"The main question in this case is, whether a railroad compa
can be compelled by *mandamus* to run a passenger train. T
appellee operates about fifty miles of railroad running from D
Quoin easterly to Eldorado, which it leased in 1880 for 985 ye
from the Belleville and Eldorado Railroad Company; and it is c
ceded, that it runs no passenger train, that is, no train for passeng
service exclusively, over this distance of fifty miles between D
Quoin and Eldorado * * * but the only train, which ru
the whole length of the branch road between DuQuoin and El

rado is what is called a mixed train, consisting of coal, stock and freight cars, to which are attached a combination car and passenger coach.

* * * * * * *

"'Every railroad corporation in the State shall furnish, start and run cars for the transportation of such passengers and property as shall, within a reasonable time previous thereto, be ready or be offered for transportation at the several stations on its railroads and at the junctions of other railroads, and at such stopping places as may be established for receiving and discharging way passengers and freights.'"

The Illinois statute, it will be seen, is no broader in its terms than ours, nor any more definite in stating what the duty of the railroad company is in respect to the kind of passenger service it shall furnish. The above opinion further reads:

561 "It cannot be said, that the carrier of passengers in a car attached to a freight train is a suitable and proper operation of a railroad, so far as the carriage of passengers is concerned. The transportation of passengers on a freight train, or on a mixed train, is subordinate to the transportation of freight, a mere incident to the business of carrying freight. To furnish such cars as are necessary for the suitable and proper carriage of passengers involves the necessity of adopting that mode of carrying passengers which is best adapted to secure their safety and convenience.

* * * * * * *

"We are not unmindful of the fact, that, within certain limits, a discretion may be exercised as to what rolling stock and equipment are necessary for the suitable and proper operation of a railroad carrying passengers. When the mode of carrying passengers is separate from the mode of carrying freight, the legitimate exercise of discretion may begin. What we hold is, that there cannot be suitable and proper operation of the railroad as a carrier of passengers, when the car, in which it carries its passengers, is part of a freight train, because freight trains are inferior to passenger trains, and travel in them is attended with less comfort, convenience and safety than travel in passenger trains. The inferiority of a freight train to a passenger train as a mode of carrying passengers is so obvious, that no man of ordinary understanding would regard the use of a freight train for the purpose of hauling a passenger car, as a suitable and proper operation of a railroad in the matter of transporting passengers."

Defendant contends that by section 1316, General Statutes of 1901, it is provided that,

"Every railway corporation shall, in addition to the powers hereinbefore conferred, have power—

"*Eighth.* To regulate the time and manner in which passengers and property shall be transported, and the compensation to 562 be paid therefor; said compensation not to exceed the rates fixed by law,"

and that this being the law when defendant's charter was
the claim is, that it became a part of the contract between t
pany and the state. It is conceded that the legislature mig
fully repeal this proposition, but it is claimed that as the p
never has been expressly repealed, and as repeals by imp
are not favored, the railroad company still has the power c
by the act.

The question of repeals by implication is not involved. R
still possess the power to regulate the time and manner in
passengers shall be transported, as conferred upon them by
1316, *supra*, but this never meant that a railroad company
right to furnish flat cars, for instance, for the transporta
passengers. The construction which defendant asks us t
upon section 1316, *supra*, is contrary to the rule that a const
will not be given which yields the power of the legislature t
legislation upon the same subject. A railroad charter is tak
held, subject to the power of the state to regulate and control th
in the interest of the public. (Louisville and Nash. R'd Co.
tucky, 183 U. S. 503.) But a stronger reason is, that it
construed with section 1322 of the same act, which requires
companies to furnish sufficient accommodation for the tra
tion of passengers. Exactly the same defense was set up
Illinois case, *supra*, but the court declared that,

"The discretionary power of railroad companies in this
is subject always to the condition, that there is no statuto
vision limiting and restricting such power, and that its exe
not opposed to the terms of the charter. * * *

This discretion is also subject to the condition, that it
exercised in good faith and with a due regard to the necessit
convenience of the public."

(Citing People *ex rel. v.* Chicago and Alton Railroad C
Ill. 175; Mobile & Ohio Railroad Co. *v.* People, 1
563 559; 2 Morawetz on Corp., 2d ed., section 1119.) S
N. C. Corp. Com. *v.* Atlantic Coast L. R. Co., *supra*.

We have quoted at some length from the opinion in the
case. The issue was not so much a question of the reasona
of requiring separate passenger-trains as it was a question
absolute right of the state to demand such service under st
and charter provisions similar to ours. The reasons upon
the opinion is based apply with much force to the question
consideration here. It is unnecessary to decide the questi
volved directly in that case, but we hold that the order of th
under all the circumstances is not upon its face an unrea
one.

The burden of proof was, therefore, on the defendant t
that the order is unreasonable. The referee, among othe
ings of fact, made the following:

"2. The Madison line, as built and operated, extends fro
teith Junction, Missouri, to Madison, Greenwood county,
a distance of 108 miles, eighty-nine miles of which are wit
state of Kansas; but trains have been run from Butler, M

on account of there being no terminal facilities at Monteith Junction. The distance from Monteith Junction to Butler is about three miles. At Monteith Junction the Madison line connects with the Joplin line of the Missouri Pacific, giving connections to Kansas City, St. Louis and other points north, south and east.

"10. The evidence does not furnish data, made up in the same way, of earnings and expenses for the same period of time, in the operation of this line. Consequently, only an approximation can be made in a comparison of earnings and expenses. Part of the time the Madison line was an accounting division by itself and correct accounts of receipts and expenditures ought to be available. They have been furnished for part of the expenses, but not for the earnings, and the latter, especially as to freights, are approximated by prorating on a mileage basis. Such approximation is inaccurate and in some instances at least has been made up for this case by a method which is different from that ordinarily
564 used by the company. In the matter of freight earnings, it has been and still is the rule of the defendant company, in making a division of freight earnings between any particular line and the other lines, to apportion such earnings on a mileage basis, but the line on which the shipment originates or where it terminates, is given a minimum mileage of fifty miles where there is a long haul on other lines and a short haul—12 or 20 miles for example—on the line that receives or delivers the shipment. This rule was disregarded in making up the tables in evidence in this case, so that they do not correctly show what freight earnings should be credited to the Madison line during any particular period.

"In the matter of the earnings of passenger trains, the moneys received from express companies for the carriage of express matter, is an approximation based upon business done in 1889 and 1890, which cannot be said to be any proper standard of comparison for this case.

"11. The passenger earnings above stated are ascertained, not including the estimate of the express business as stated in the 10th finding, almost wholly from actual accounts of the passenger train business on this line. The freight earnings are simply estimated by taking the earnings of the Kansas & Colorado system and apportioning to the Madison line its pro rata on a mileage basis. The actual freight earnings are probably considerably greater than stated.

"12. The earnings of the Kansas & Colorado Pacific Railway Company for the time named in the last finding were $10,673,778.71, and the expenses of operation and maintenance $9,043,107.44, showing net earnings of $1,630,671.27. For the year ending April 1, 1906, the freight earnings and expenses on the Kansas & Colorado Pacific lines were, as approximated on mileage basis:

Earnings	$6,146,283.82
Expenses	5,162,679.96
Net earnings	$983,603.86

565 "13. The total freight earnings from freight traffic wh
originated or terminated, on the Madison line, or wh
passed over some part of that line, amounted to the sum of $1
947.79, from May 1, 1905, to April 1, 1906. Of this there has b
apportioned to the Madison line, for the purpose of showing in
case the freight earnings thereof, the sum of $22,369.39.
amount is obtained by giving to the Madison line the proportio
the earnings which the haul on that line bears to the entire hau
all the Missouri Pacific lines. Such apportionment does not, h
ever, make a true and just division of earnings to which this
is entitled, and the evidence furnishes no data by which a pr
division of earnings can be determined.

"19. All the estimates made in the foregoing findings of earn
and expenses include both state and interstate traffic. No metho
separation is possible on the evidence.

"23. During the time the defendant company maintained
arate passenger service on the Madison line, it had the contra
carry the government mails thereon, for which it was paid the
of $5,000.00 yearly. Under the mixed train service, the governm
does not use the railroad for mail service to points on this line."

Among his conclusions of law are the following:

"3. The finding of the board that during the years 1902 and 1
the passenger-train was operated at a loss, does not shift the bu
of proof in this case onto the state, when the further finding is n
that the people along the line of the road are entitled to a b
service than that afforded by only a mixed train, and the defen
company is ordered to provide separate passenger service. It wi
presumed that the order was based upon a consideration of the
eral traffic and revenues of this line of road.

"4. Since the defendant has combined this line of road, for
ation, management and accounting, with the Kansas & Colo
Pacific Railway Company lines, so as practically to constitute
twelve lines embraced by that company a single unit for purpos
operation, and no definite ascertainment of the actual earning
the Madison line can be made, a separate passenger se
566 should be maintained if the net earnings of the Kans
Colorado Pacific Railway justify such service.

"5. The Madison line, if dependent upon its own traffic and
used as a feeder to other Missouri Pacific lines, would not pay
cost of maintaining separate passenger—and freight—trains, an
order for such service would not be reasonable. But considere
a part of the Missouri Pacific system, I think a requirement of
service would not be unreasonable.

"6. The burden of proof being upon the defendant, it has fa
to show that the traffic—passenger and freight—originating
terminating, on the Madison line, does not contribute to the
ings of the other lines of the system operated by defendant
pany in sufficient amount to entitle the people along the line
better service, and has failed to show that the order for such se
is not a reasonable requirement.

"7. The Madison line is interstate in construction, connect

and operation, the running of trains from Madison to Moteith Junction or Butler being necessary in order to give the operating company any reasonable opportunity to meet expenses of such operation. It would be unreasonable to require a separate passenger-train to be operated on this line only within this state."

The referee found that defendant, upon whom rested the burden of proof, had failed to produce evidence which ought to have been available, evidence which from its nature defendant must have had in its possession or control; that portions of the estimates were approximation which he finds "inaccurate and in some instances at least has been made up for this case by a method which is different from that ordinarily used by the company"; that the rule in force by the company for ascertaining the true proportion of freight earnings between any particular line and other lines was disregarded in making up the tables in evidence, so that they do not correctly show what freight earnings should be credited to the Madison line during any particular period; that the figures presented to show the express earnings were "based upon business done in 1889
567 and 1890"; and further that the amount of freight earnings apportioned to the Madison line is obtained by a method of accounting which does not "make a true and just division of earnings to which this line is entitled, and the evidence furnishes no data by which a proper division of earnings can be determined."

In the face of these findings we are unable to concur in some of the conclusions of law reached by the referee. The fifth conclusion of law, to the effect that the Madison line would not pay the cost of separate passenger-trains, is not supported by the facts in evidence as established by the previous findings. It appears to rest solely upon the theory that as the evidence showed that the road is operated as a continuous line from Monteith Junction, and is interstate in its connections, and because no data was furnished to show its earnings within the state, therefore, it follows that its revenues can only be determined by considering its proportion as a part of the Missouri Pacific system. No matter how much evidence was introduced showing that this line is operated as a continuous line from Monteith Junction in Missouri, to the end of the road in Kansas, and is interstate in its connections, still the matter is not thereby necessarily concluded. The order might still be reasonable, dependent upon its earnings derived from that part of the line wholly within the state of Kansas. Findings had already been made showing that this road extends for eighty-nine miles into the state of Kansas and twelve miles east into Missouri; that in Kansas it crosses four counties the least populous of which contains over 13000 people; that it is the only railroad at Mound City, the county seat of Linn County; that it intersects in Kansas eight other roads six of which are no part of the Missouri Pacific system. Some of its traffic is, of course, interstate, but some, how much does not appear, must necessarily be domestic, arising and terminating wholly within the state. If from either of the six roads it intersects in which the Missouri Pacific system has no interest, freight arising wholly in Kansas should be re-

ceived by it to be hauled to Mound City or to any other point
568 in Kansas, it would be entitled to receive its proportionate share of the charges. It is inconceivable that its earnings can only be determined by treating it as a part of the Missouri Pacific system. Defendant had the opportunity given it to prove, and may have been able to prove, that its earnings from business arising wholly within the state, are much less than the expenses properly chargeable to that portion of its line, but instead of doing so it failed, and the only inference that can be drawn from the referee's findings of fact is, that it made no honest effort to do this, but on the contrary, introduced approximate estimates prepared for the occasion, contrary to the ordinary rules for proportioning the earnings and expenses between other roads and a line of road operated as this was. The effect of this class of evidence was to deprive this branch line of the credit to which it is entitled by the findings of the referee, and the utmost that can be said for the evidence as a whole is that it left the controversy in doubt and conjecture. The *prima facie* effect of an order of this kind should not be overcome by evidence so unsatisfactory as that furnished from estimates of this character and from figures showing the earnings from express charges in 1889 and 1890, with no attempt to procure more recent data or to explain the reasons why it was not available, and with no attempt to show the earnings or expenses of the road properly chargeable to that portion lying within the state.

There is, by the way, in all the voluminous briefs of defendant no suggestion or intimation that the evidence produced overcame the *prima facie* case. Defendant relies upon three propositions; the unconstitutionality of the law, the unreasonableness of the order on its face and the claim that the Madison line being interstate in its connections and operation, any order of this character is an unjust interference with interstate commerce.

This is an original proceeding in mandamus. We are not bound by the referee's conclusions either of fact or of law as would be the case were the facts found by another court or a jury or referee of another court. We conclude, as a matter of law, from the
569 evidence and findings of fact of the referee, that the *prima facie* effect of the order is not overcome by the evidence offered by defendant. The nature and character of the order itself are such as to require, in our opinion, some substantial showing upon the part of defendant to rebut the presumption that it is reasonable and just. To require of defendant that separate passenger-trains should be operated over that portion of its line within the state is, under all the circumstances of the case, so reasonable that it requires something more than mere inferences and doubts to prevail against the theory that it is just and reasonable. Nor do we think that defendant has produced or offered to produce the evidence which must have been within its power for the purpose of showing either the earnings or expenses from the operation of that portion of its line within the state.

Moreover, the fact that an order requiring a railroad company to furnish additional facilities for the accommodation of the public

will occasion expense to the company and even loss of profits does not necessarily make the order unreasonable. (Atlantic Coast Line *v.* N. Car. Corp. Com'n, *supra.*) As was said by the court in Wisconsin &c. R'd Co. *v.* Jacobson, 179 U. S. 287, 302:

"Although to carry out the judgment may require the exercise by the plaintiff in error of the power of eminent domain, and will also result in some, comparatively speaking, small expense, yet neither fact furnishes an answer to the application of defendant in error."

In Atlantic Coast Line *v.* N. Car. Corp. Com'n, *supra*, the order of the railroad commissioners of North Carolina required the company to change its schedule for the operation of its trains so as to furnish connections with through trains upon another road. In the opinion, after stating that a distinction necessarily exists between an order requiring additional facilities for the accommodation of the public and an order fixing rates, Mr. Justice White uses this language:

570 "This is so because as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled, although by doing so as an incident some pecuniary loss from rendering such service may result. * * * Of course, the fact that the furnishing of a necessary facility ordered may occasion an incidental pecuniary loss is an important criteria to be taken into view in determining the reasonableness of the order, but it is not the only one. As the duty to furnish necessary facilities is coterminous with the powers of the corporation, the obligation to discharge that duty must be considered in connection with the nature and productiveness of the corporate business as a whole, the character of the services required, and the public need for its performance."

The act creating the board of railroad commissioners does not, in our opinion, affect, nor was it designed to affect, interstate commerce. The order of the board requiring defendant to operate separate passenger service within the state is in the exercise of its police power to enforce local regulations necessary for the convenience, safety and comfort of the public, and is not an attempt to regulate interstate commerce, nor does it directly cast a burden upon such commerce. Defendant is at liberty to operate any kind of service elsewhere upon its line that it may deem advisable or suitable to its purposes. (State *v.* Western Union Tel. Co., 90 Pac. 299.) In the latter case Mr. Justice Burch, speaking for the court, said:

"It has been declared in a host of decisions that, in order to affect interstate commerce and government business in the legal sense of the expression, state regulations must impinge directly upon them. Consequences which are indirectly, remote, and incidental only are not invalidating."

In Louisville &c. Railway Co. *v.* Mississippi, 133 U. S. 587, it was held that a statute of Mississippi requiring a railroad to furnish separate compartments for white and black passengers, when applied to that portion of an interstate road within the state, is not
571 placing a burden upon interstate commerce, although it was conceded that it required the railroad company to go to the expense of providing separate accommodations for use within the

state which, when the same road crossed into another state, was not required. In the opinion Mr. Justice Brewer uses the following language:

"So far as the first section is concerned, and it is with that alone we have to do, its provisions are fully complied with when to trains within the State is attached a separate car for colored passengers. This may cause an extra expense to the railroad company; but not more so than state statutes requiring certain accommodations at depots, compelling trains to stop at crossings of other railroads, and a multitude of other matters confessedly within the power of the State."

In Louisville & Nashville R'd *v.* Kentucky, 161 U. S. 677, it is said:

"It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers. Nearly all the railways in the country have been constructed under state authority, and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable." And in Louisville and Nash. R'd Co. *v.* Kentucky, 183 U. S. 503, the following language is used:

"It may be that the enforcement of the state regulation forbidding discrimination in rates in the case of articles of a like kind carried for different distances over the same line may somewhat affect commerce generally; but we have frequently held that such a result is too remote and indirect to be regarded as an interference with interstate commerce; that the interference with the commercial power of the general government to be unlawful must be direct, and not the merely incidental effect of enforcing the police powers of a
572 State. *New York, Lake Erie and Western Railroad v. Pennsylvania*, 158 U. S. 431, 439; *Henderson Bridge Co. v. Kentucky* 166 U. S. 150."

The enforcement of the order in this case is a mere incident to the police powers of the state. If it touches interstate commerce it is only in an incidental way, and no more than would an order compelling the railroad to fence its tracks or regulate the speed of its trains or conform to numerous other regulations which every one concedes the state may require without placing restrictions or burdens upon interestate commerce. It is said that the order cannot be complied with without forcing defendant to establish terminals at the state line. It is a matter of common observation that no elaborate system of terminals, round houses or shops is necessary to enable defendant to comply with an order of this character. It is expressly decided in Smyth *v.* Ames, *supra*, that,

"The State cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control; nor can the carrier

justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business." The doctrine thus declared is a two-edged sword. The carrier in order to meet losses on its interstate business can not deprive the people along the line of its road within the state of reasonable facilities for travel; can not oblige them, for instance, to travel upon freight trains or flat-cars, or to be satisfied with what is unreasonably inadequate service.

One other matter deserves mention. The order is in the alternative, and requires defendant to adopt motor-car service for passengers on its line if that be found practicable, or to establish and maintain separate passenger-train service. It is objected that defendant can not, without violating its charter, comply with that part of
573 the order requiring it to operate motor-cars, and that the board of railroad commissioners have no jurisdiction over any kind of a railroad except those operated by steam.

The part of the order requiring the establishment of motor-car service is a favor to defendant, and intended as a matter of grace, and not as against defendant. The order requires separate passenger service and gives defendant the right to put on motor-cars if it finds them practicable. The suggestion of the use of motor-cars came from defendant in the first place, and the answer sets up that defendant has been experimenting with that kind of cars, and that although the practical utility of motor-cars is problematical, it is defendant's design to operate them if it be found that they can be successfully and economically operated. The board possessed the power to order separate passenger-trains established, and we need not stop to inquire into its power to authorize motor-cars in lieu thereof. If that part of the order can not be complied with by defendant because motor-cars can not be successfully and economically operated, or if the charter of the defendant forbids it to change its motive power and operate such cars, none of these things can relieve it of the duty of obeying the other part of the order. If the board had no power to order defendant to operate motor-cars so much of the order is merely surplusage. The rest is valid.

The peremptory writ will issue.

All the justices concurring.

A true copy. Attest:

_____,

Clerk Supreme Court.

574 SUPREME COURT, *State of Kansas, ss:*

I, D. A. Valentine, Clerk of the Supreme court of the state of Kansas do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of The State of Kansas, *ex rel.*, plaintiff *vs.* The Missouri Pacific Railway Company, defendant, and also of the opinion of the court rendered therein as the same appears on file in my office.

Witness, my hand and the seal of the supreme court hereto affixed at my office in Topeka, Kansas, this 10th day of December 1907.

[Seal Supreme Court State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court of Kansas.

575 Here, follow the original petition for a writ of error, assignments of error and Prayer for reversal, the Journal entry of allowance of writ of error and fixing bond for supersedeas, copy of supersedeas bond, the original of which is lodged in State Supreme Court, the writ of error, copies of which are lodged with the clerk of the State Supreme Court of Kansas, one addressed to the Clerk and one to the defendant in error herein. The citation together with the acceptance of service thereof:

576 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for the Board of Railroad Commissioners, and C. C. COLEMAN, Attorney General of the State of Kansas, Plaintiffs,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

Petition for a Writ of Error.

The Missouri Pacific Railway Company, the above named defendant, considering itself aggrieved by the final decision of the Supreme Court of Kansas in rendering judgment against it in the above entitled case, hereby prays a writ of error from the decision and judgment to the Supreme Court of the United States, and an order fixing the amount of a supersedeas bond.

And the said The Missouri Pacific Railway Company, defendant, as grounds for the issuance of said writ of error, alleges the following errors in the record and proceedings of said cause:

First.

The Supreme Court of the State of Kansas erred in refusing to hold and decide that, under the Constitution of the United States and the laws of Congress passed in pursuance thereof, the defendant, The Missouri Pacific Railway Company, was justified in refusing to obey the order of the Board of Railroad Commissioners of the State of Kansas made on the 7th day of December, 1905.

Second.

The said Court erred in refusing to decide and hold that the defendant, being an interstate carrier, and the Madison Branch
577 an interstate line, and an integral part of the railway system of the defendant, was thereby withdrawn from the jurisdic-

tion, supervision and control of the Board of Railroad Commissioners of the State of Kansas, and its operation under the exclusive jurisdiction, supervision and control of the Interstate Commerce Commission, and the Act of Congress entitled "An Act to regulate commerce", and the amendments thereto.

Third.

The said Court, having approved the findings and conclusions of the Referee that the said Madison Branch was interstate in construction, connections and operation, and that it was a part of the railway system of the defendant, an interstate carrier, and operated as such, committed error in holding and deciding that it had the jurisdiction and power to compel the defendant to operate a passenger train from Madison, Kansas, to a point on the Kansas state line where it had no terminals, depots or connections with any other railway, and, in so deciding, denied to the defendant the equal protection of the law, and deprived it of its property and revenues without just compensation, and without due process of law, and in violation of the Constitution of the United States, and the laws passed in pursuance thereof.

Fourth.

It appearing conclusively from the evidence, the findings of fact made by the Referee, and by the Court that said Madison Branch from Madison, Kansas, to Butler, Missouri, was an instrumentality of interstate commerce, and maintained and operated as such, the said Court erred in holding and deciding that the Board of Railroad Commissioners of the State of Kansas had jurisdiction to make the order of date December 7th, 1905, and in not deciding that said order was inoperative and void, under the Constitution of the United States, and the laws passed in pursuance thereof.

578 Fifth.

The said Court erred in deciding that the laws of the State of Kansas under which such order was made accorded to the defendant that due process of law given and guaranteed to it under the Constitution of the United States.

Sixth.

It appearing from the evidence and findings of the Referee that such passenger train could not be operated except at a loss, and that the combined revenues of the Kansas, Colorado & Pacific Railway Company and The Missouri Pacific Railway Company would not justify the operation of said separate passenger train, the said Court committed manifest error in making the order to compel its operation, and its enforcement will deprive this defendant of its property without due process of law, without just compensation, and will deny to it the equal protection of the law,—all in violation of the Constitution of the United States.

Seventh.

The said Court, in deciding and holding that the Board of Railroad Commissioners was a mere administrative board, and possessed no legislative or judicial functions, committed manifest error in thereon holding and deciding that the said order of date December 7th, 1905, was a reasonable order on its face, and that the burden of proof was upon the defendant to show that it was unreasonable,—thereby depriving the defendant of that due process of law guaranteed by the Constitution of the United States, and denied to it the equal protection of the law.

Eighth.

The said Court erred in holding and deciding that the Act of the legislature of Kansas creating the Board of Railroad Commissioners was not designed to affect and does not apply to or regulate interstate commerce.

579

Ninth.

The said Court erred in holding and deciding that the Act of the legislature of Kansas, and amendments thereto, creating the Board of Railroad Commissioners was not in violation of the Constitution of the United States, upon the ground that it provides for the taking of property of persons or corporations without due process of law.

Tenth.

The Supreme Court of Kansas erred in assuming jurisdiction of said suit, in so far as it involved the subject of interstate commerce, and the operation of an instrumentality of interstate commerce.

For which errors the said Missouri Pacific Railway Company, defendant, prays that the said judgment of the Supreme Court of the State of Kansas, dated November 18, 1907, be reversed, and that it be restored to all things it has lost thereby.

B. P. WAGGENER,
Attorney for the Missouri Pacific Railway Company.

STATE OF KANSAS, *Supreme Court, ss:*

Let the writ of error above prayed for issue upon the execution of a bond by the Missouri Pacific Railway Company to the State of Kansas, in the sum of Five thousand Dollars ($5000.00), with surety to be approved by the Chief Justice, or one of the Justices of the Supreme Court of Kansas. Such bond, when approved, to act as a supersedeas.

Dated November 18, 1907.

W. A. JOHNSTON,
Chief Justice Supreme Court of Kansas.

580 [Endorsed:] 14999. State of Kansas *ex Rel.* v. Mo. Pac. Ry. Co. Petition for Writ of Error. Filed Nov. 18, 1907. D. A. Valentine, Clerk Supreme Court.

581 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for the Board of Railroad Commissioners, and C. C. COLEMAN, Attorney General of the State of Kansas, Plaintiffs,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

Assignment of Errors.

Now comes the above defendant, The Missouri Pacific Railway Company, and files herewith its petition for a writ of error, and says that there are errors in the record and proceedings of the above entitled case, and, for the purpose of having the same reviewed in the Supreme Court of the United States, it makes the following statement and assignment of said errors:

First.

The Supreme Court of the State of Kansas erred in refusing to hold and decide that, under the Constitution of the United States and the laws of Congress passed in pursuance thereof, the defendant, The Missouri Pacific Railway Company, was justified in refusing to obey the order of the Board of Railroad Commissioners of the State of Kansas made on the 7th day of December, 1905.

Second.

The said Court erred in refusing to decide and hold that the defendant, being an interstate carrier, and the Madison Branch an interstate line, and an integral part of the railway system of the defendant, was thereby withdrawn from the jurisdiction, supervision and control of the Board of Railroad Commissioners of the State of Kansas, and its operation under the exclusive jurisdiction,
582 supervision and control of the Interstate Commerce Commission, and the Act of Congress entitled "An Act to regulate commerce", and the amendments thereto.

Third.

The said Court, having approved the findings and conclusions of the Referee that the said Madison Branch was interstate in construction, connections and operation, and that it was a part of the railway system of the defendant, an interstate carrier, and operated as such, committed error in holding and deciding that it had the jurisdiction and power to compel the defendant to operate a passenger train from Madison, Kansas, to a point on the Kansas state line where it had no terminals, depots or connections with any other railway, and, in so deciding, denied to the defendant the equal protection of the law, and deprived it of its property and revenues without just compensation, and without due process of law, and in violation of the Constitution of the United States, and the laws passed in pursuance thereof.

Fourth.

It appearing conclusively from the evidence, the findings of fact made by the Referee, and by the Court that said Madison, Branch from Madison, Kansas, to Butler, Missouri, was an instrumentality of interstate commerce, and maintained and operated as such, the said Court erred in holding and deciding that the Board of Railroad Commissioners of the State of Kansas had jurisdiction to make the order of date December 7th, 1905, and in not deciding that said order was inoperative and void, under the Constitution of the United States, and the laws passed in pursuance thereof.

Fifth.

The said Court erred in deciding that the laws of the State of Kansas under which such order was made accorded to the defendant that due process of law given and guaranteed to it under the Constitution of the United States.

583 Sixth.

It appearing from the evidence and findings of the Referee that such passenger train could not be operated except at a loss, and that the combined revenues of the Missouri Pacific Railway Company and the Kansas & Colorado Pacific Railway Company would not justify the operation of said separate passenger train, the said Court committed manifest error in making the order to compel its operation, and its enforcement will deprive this defendant of its property without due process of law, without just compensation, and will deny to it the equal protection of the law,—all in violation of the Constitution of the United States.

Seventh.

The said Court, in deciding and holding that the Board of Railroad Commissioners was a mere administrative board, and possessed no legislative or judicial functions, committed manifest error in thereon holding and deciding that the said order of date December 7th, 1905, was a reasonable order on its face, and that the burden of proof was upon the defendant to show that it was unreasonable,—thereby depriving the defendant of that due process of law guaranteed by the Constitution of the United States, and denied to it the equal protection of the law.

Eighth.

The said Court erred in holding and deciding that the Act of the legislature of Kansas creating the Board of Railroad Commissioners was not designed to affect and does not apply to or regulate interstate commerce.

Ninth.

The said Court erred in holding and deciding that the Act of the legislature of Kansas, and amendments thereto, creating the Board of Railroad Commissioners was not in violation of the Constitution of the United States, upon the ground that it provides for the
584 taking of property of persons or corporations without due process of law.

Tenth.

The Supreme Court of Kansas erred in assuming jurisdiction of said suit, in so far as it involved the subject of interstate commerce, and the operation of an instrumentality of interstate commerce.

For which above stated errors the defendant, The Missouri Pacific Railway Company, prays that the judgment of the Supreme Court of the State of Kansas, dated November 9th, 1907, be reversed, and that it be restored to all things which it has lost thereby.

B. F. WAGGENER,
Attorney for the Missouri Pacific Railway Company.

585 [Endorsed:] 14999. State *ex rel.* v. Mo. Pac. R'y Co. Assignments of error. Filed Nov 18 1907. D. A. Valentine Clerk Supreme Court.

586 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for the Board of Railroad Commissioners, and C. C. COLEMAN, Attorney General of the State of Kansas, Plaintiffs,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY, a Corporation, Defendant.

Journal Entry of Allowance of Writ of Error and Superseding Judgment.

The defendant, The Missouri Pacific Railway Company, having presented its application for a writ or error to the Supreme Court of the State of Kansas to correct the judgment rendered by the said Court against it, in the suit wherein the State of Kansas *ex rel.* Carr W. Taylor, Attorney for the Board of Railroad Commissioners, and C. C. Coleman, Attorney General of the State of Kansas, were plaintiffs, and the Missouri Pacific Railway Company was defendant, and having presented with its application its due assignment of errors in that regard, presents now a citation to be signed.

Accordingly it is ordered that said writ of error be allowed, and said citation signed, upon the said defendant giving to the said plaintiffs a good and sufficient bond in the sum of five thousand dollars ($____), conditioned that said defendant shall prosecute its writ of error to effect, and, if it fails to make good its plea, shall

answer all damages and costs; said security and bond to be approved by this Court, or one of the Justices thereof, and the writ thereunder to be a supersedeas.

And thereupon said defendant now presents a bond, with good and sufficient surety, in said sum of $5000.00, a
587 aforesaid, which is approved by the Chief Justice, and ordered filed with the Clerk of the Supreme Court of the State of Kansas.

O. K.
JOHNSTON, *C. J.*

588–590 [Endorsed:] 11999. State of Kansas *ex rel. v.* Mo Pac. R'y Co. Journal entry of allowance Writ of error & supersedeas. Filed Nov. 18 1907. D. A. Valentine Clerk Supreme Court.

* * * * * * *

591 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest Court of law or equity of the said State, in which a decision could be had in the certain suit between The State of Kansas, *ex rel.* Carr W. Taylor, Attorney for the Board of Railroad Commissioners, and C. C. Coleman, Attorney General of the State of Kansas, and the Missouri Pacific Railway Company, wherein was drawn in question the construction of a clause of the Constitution of the United States, and likewise the construction of acts of Congress of the United States enacted in pursuance of such Constitution, and wherein was also drawn in question the validity of a statute of the said State of Kansas, and of an authority exercised under said State, on the ground of their being repugnant to the Constitution and the laws of the United States, and the decision was against the title, right, privilege or exemption specifically set up or claimed under the said Constitution and the said Statute, and the said decision was likewise in favor of the validity of said statute of said state, and the authority exercised under it, a manifest error has happened, to the great damage of the said The Missouri Pacific Railway Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same,
592 to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at

Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and, according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18 day of November, in the year of our Lord one thousand nine hundred and seven.

[The Seal of the Circuit Court of the United States, District of Kansas, 1862.]

GEO. F. SHARITT,
Clerk Circuit Court United States
District of Kansas.

Allowed:

W. A. JOHNSTON,
Chief Justice Supreme Court of Kansas.

593 [Endorsed:] 14999. State of Kansas *ex rel. v.* The Mo. Pac. Ry. Co. Writ of Error. Filed Nov. 18, 1907. D. A. Valentine, Clerk Supreme Court.

594 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State of Kansas, *ex Rel.* Carr W. Taylor, Attorney for the Board of Railroad Commissioners, and C. C. Coleman, Attorney General of the State of Kansas, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C. within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Kansas, wherein The Missouri Pacific Railway Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Kansas this 18 day of Nov., 1907.

[Seal Supreme Court State of Kansas.]

W. A. JOHNSTON,
Chief Justice Supreme Court of Kansas.

Attest:

D. A. VALENTINE,
Clerk Supreme Court of Kansas.

Service of the foregoing is hereby duly acknowledged this 18th day of November, 1907.

FRED S. JACKSON,
Attorney General of the State of Kansas.

595 [Endorsed:] 14999. State of Kansas *ex rel. v.* The Mo. Pac. Ry. Co. Citation & acknowledgement of service. Filed Nov. 18, 1907. D. A. Valentine, Clerk Supreme Court.

596 SUPREME COURT, *State of Kansas, ss:*

I, D. A. Valentine, Clerk of the Supreme court of the state of Kansas, do hereby certify that there was lodged with me as such clerk, on November 18th, 1907, in the matter of The State of Kansas *ex rel. vs.* The Missouri Pacific Railway Company,

1. The original bond of which a copy is herein set forth.

2. Two copies of the writ of error, as herein set forth, one for the State of Kansas *ex rel.* and one to file in my office.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Topeka Kansas, this 10th day of December 1907.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court of Kansas.

597 UNITED STATES OF AMERICA,
Supreme Court of Kansas, ss:

In Obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme court of Kansas, in the city of Topeka, this 10th day of December, 1907.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court of Kansas.

598 In the Supreme Court of the United States.

THE MISSOURI PACIFIC RAILWAY COMPANY, Plaintiff in Error,
vs.
THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, ET AL., Defendants in Error.

Stipulation.

It is hereby stipulated and agreed:

That plaintiff in error may, on or before October 1st, 1908, cause to be printed such portions of the record as it may deem necessary to present the errors by it complained of, and, after the same is printed and served upon the defendant in error, the defendant in error shall have 60 days fr October 1st, 1908, to have printed any additional part of the record which it may deem necessary; and if,

or before the expiration of said date, defendant in error does not
ct to have any additional part of the record printed, the errors
mplained of shall be submitted on the abstract printed and served
plaintiff in error.

B. P. WAGGENER,
Attorneys for Plaintiff in Error.
C. C. COLEMAN,
C. W. TAYLOR,
F. S. JACKSON,
Attorneys for Defendants in Error.

In the Supreme Court of the United States, October Term, 1907.

No. 537.

THE MISSOURI PACIFIC RAILWAY COMPANY, Plaintiff in Error,
vs.
THE STATE OF KANSAS *ex Rel.* CARR W. TAYLOR, Attorney for the Board of Railroad Commissioners, *et al.*, Defendants in Error.

In Error to the Supreme Court of the State of Kansas.

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604 [Endorsed:] File No. 20,940. Supreme Court U. S., October term, 1908. Term No. 225. The Missouri Pacific Ry. Co., P. E., *vs.* The State of Kansas *ex rel.* Carr W. Taylor, Att'y, &c., *et al.* Stipulation as to printing record & designation by P. E. of parts to be printed. Filed July 18, 1908.

Endorsed on cover: File No. 20,940. Kansas Supreme Court. Term No. 225. The Missouri Pacific Railway Company, plaintiff in error, *vs.* The State of Kansas *ex rel.* Carr W. Taylor, attorney for the Board of Railroad Commissioners, and C. C. Coleman, attorney general of the State of Kansas. Filed December 17th, 1907. File No. 20,940.

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No. 38.

Office of the Supt. U. S.
FILED.
NOV 27 1909
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States

THE MISSOURI PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF KANSAS, EX REL. CARR W. TAYLOR, ATTORNEY FOR THE BOARD OF RAILROAD COMMISSIONERS, AND C. C. COLEMAN, ATTORNEY GENERAL OF THE STATE OF KANSAS,
Defendant in Error.

STATEMENT, BRIEF AND ARGUMENT.

BALIE P. WAGGENER,
Attorney for Plaintiff in Error.

Burbank Printshop, Atchison, Kas.

In the Supreme Court of the United States

THE MISSOURI PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF KANSAS, EX REL. CARR W. TAYLOR, ATTORNEY FOR THE BOARD OF RAILROAD COMMISSIONERS, AND C. C. COLEMAN, ATTORNEY GENERAL OF THE STATE OF KANSAS,
Defendant in Error.

STATEMENT OF CASE.

The Kansas & Colorado Pacific Railway Company is a corporation organized and incorporated under the laws of the State of Kansas, and owns about fourteen hundred miles of railroad in said state, which, for several years last past, has been operated

by the Missouri Pacific Railway Company, a corporation created and organized under the laws of the State of Missouri. The Kansas & Colorado Pacific Railway Company was created by the consolidation of some ten or twelve railway companies incorporated under the laws of the State of Kansas.

Among other lines of railway owned by the Kansas & Colorado Pacific Railway Company is one known as the Madison line, running from Madison, Kansas, to Butler, Missouri. This line was originally constructed by the Interstate Railroad Company, incorporated under the laws of the State of Kansas, which said Interstate Railroad Company thereafter became one of the constituent companies of the Kansas & Colorado Pacific Railway Company.

On the 14th day of September, 1905, the citizens residing along the line of the Missouri Pacific Railway extending from the Missouri and Kansas line to Madison, Kansas, filed a complaint with the Board of Railroad Commissioners, wherein they alleged, in substance, that for many years last past the said Missouri Pacific Railroad Company had operated a passenger train over its said line through the County of Linn, in the State of Kansas, to said Madison, Kansas, which was remunerative to said railway company, and that the company, without any reason therefor, discontinued such passenger train service, and asked for an investigation and an order restoring the service. A hearing was had before the Board, and thereafter, on December 7th, 1905, the said Board of Railroad Commissioners made and entered the following order:

"Now on this 7th day of December, 1905, after hearing the evidence and argument of counsel in the above entitled action, the Board finds that during the years 1902 and 1903, when the respondent railway company operated a passenger train on the Madison Branch of its line, *that the said passenger train was operated at a loss, and there was no testimony introduced at this hearing that the train, if put on as asked for by the petitioners, could be operated at a profit to the respondent company.* The Board believes that the people along the line of the Madison Branch of said company are entitled to better passenger train service than they are now receiving, and it has been represented to the Board by officers of said company that the respondent is constructing motor cars for establishment on its branch lines that can be operated at a much less expense than steam service.

It is therefore ordered by the Board that, on or before the 1st day of May, 1906, a motor passenger car service be put on and operated on said Madison Branch, from Madison, Kansas, to the Kansas and Missouri state line, and, in the event said railroad company is unable at that time to put on a motor car passenger service, a regular steam passenger train service be forthwith put on and operated."

No attempt was made by the railway company to comply with the order of the Board, and, on the 24th day of May, 1906, there was filed in the office of the clerk of the Supreme Court of the State of Kansas a petition for an alternative writ of mandamus (Abst., pp. 1-7), and thereon an alternative

writ of mandamus was issued (Abst., pp. 8-14). The Missouri Pacific Railway Company made its return to the writ without having obeyed the command of said writ,—its reason for such failure to obey said command being set forth in its answer (Abst., pp. 14-19).

Subsequently the controversy was referred to T. F. Garver, of Topeka, Kansas (Abst., p. 20), who was appointed referee to take the evidence, and to make findings of fact and conclusions of law therefrom, and was invested with all the powers of a referee of said court. The referee reported the evidence, the material parts of all which are contained in the abstract (Abst., p. 21), and thereon made and filed his findings of fact and conclusions of law, which are in words and figures as follows, to-wit:

"1. The Board of Railroad Commissioners, upon complaint made and filed September 14th, 1905, by citizens along the Madison Branch of the Missouri Pacific Railroad to require said company to operate a passenger train on said branch, and after notice and hearing, did, on December 7, 1905, make and enter an order as follows:

'Now on this 7th day of December, 1905, after hearing the evidence and argument of counsel in the above entitled action, the Board finds that during the years 1902 and 1903, when the respondent railway company operated a passenger train on said Madison Branch of its line, the said passenger train was operated at a loss, and there was no testimony introduced at this hearing that the train, if put on as asked for by the petitioners, could be operated at a

profit to the respondent company. The Board believes that the people along the line of the Madison Branch of said company are entitled to better passenger service than they are now receiving, and it has been represented to the Board by officers of said company that the respondent is constructing motor cars for establishment on its branch lines that can be operated at a much less expense than steam service.

'It is therefore ordered by the Board that, on or before the 1st day of May, 1906, a motor passenger car service be put on and operated on said Madison Branch, from Madison, Kansas, to the Kansas and Missouri state line, and in the event said railroad company is unable at that time to put on a motor car passenger service, a regular steam passenger car service be forthwith put on and operated.'

Notice of said order was duly served upon the defendant company, but the same has not been obeyed, nor has any proceedings been commenced to set the order aside.

This action to enforce the order was commenced May 24, 1906.

2. The Madison line, as built and operated, extends from Monteith Junction, Missouri, to Madison, Greenwood County, Kansas, a distance of 108 miles, eighty-nine miles of which are within the State of Kansas; but trains have been run from Butler, Missouri, on account of there being no terminal facilities at Monteith Junction. The distance from Monteith Junction to Butler is about three miles. At Monteith Junction the Madison line connects with the Joplin

line of the Missouri Pacific, giving connections to Kansas City, St. Louis, and other points north, south, and east.

3. This line of road is owned by the Kansas & Colorado Pacific Railway Company, a company formed in January, 1891, by the consolidation, under Kansas laws, of twelve other railroad companies, among them being the Interstate Railway Company, which was in turn a consolidated company, formed by articles of consolidation filed in the office of the Secretary of State in July, 1890, the constituent companies being the St. Louis & Emporia Railroad Company and the Interstate Railroad Company. The Kansas & Colorado Pacific Railroad Company is operated by the defendant company as a part of its system, and has been so operated for a number of years.

4. The line of road traverses, in Kansas, the counties of Linn, Anderson, Coffey and part of Greenwood. When the road was constructed, various townships in those counties voted and issued bonds to aid in the construction, the aggregate amount being $199,500. Capital stock, equal in amount to the bonds, was issued to the townships, respectively, and seems to be still held by them.

5. The railroad companies constructing the road issued six per cent bonds, secured by mortgage on the road, to the amount of $1,622,000, and delivered them to the construction company to pay for the cost of the work, amounting to $1,095,000. Afterwards the Missouri Pacific Railway Company acquired possession and ownership of these bonds, and a majority of the capital stock, paying therefor

$1,095,000. The capital stock was $1,622,800. I am unable to find, from the evidence submitted, just in what manner the St. Louis & Emporia and the Interstate Railroads were connected in constructing the road. Some of the townships bonds were voted to one company, and some to the other.

The road has always been operated by the Missouri Pacific Company under a lease. No interest has been paid on the railroad bonds.

6. The Madison line runs in an easterly direction from the western terminus at Madison and connects with eight other lines of road between Madison and the state line. These intersecting lines generally bear in a northerly or northeasterly direction, furnishing more direct route than the Madison line affords for travel and traffic to and from Kansas City, the nearest and most natural market for the products of that part of the state.

At Madison is a line of the Santa Fe running from the south to Emporia, where it connects with the main line of that road.

At Gridley, 14 miles east of Madison, a branch of the Atchison, Topeka & Santa Fe Railway Company connects with the Madison line, running thence in a northeasterly direction through Ottawa to Kansas City.

Near LeRoy it crosses the Missouri, Kansas & Texas line, which runs northwest through Emporia to Junction City, Kansas.

At LeRoy, 15 miles east of Gridley, the road crosses another road, operated by the Missouri Pacific Railway Company, and also a part of the Kan-

sas & Colorado Pacific Railway Company, which comes from southern points, and runs in direct line from LeRoy, in a northeasterly direction to Kansas City.

At Colony, 16 miles east of LeRoy, the line crosses another line of the Santa Fe, running north to Ottawa, Lawrence and Kansas City.

At Kincaid, 12 miles east of Colony, the line crosses another line of the Missouri, Kansas & Texas road, which runs in a northerly direction to Kansas City.

At Blue Mound, 7 miles east of Kincaid, the road crosses another line running from Fort Scott to Topeka, which was also one of the constituent parts of the Kansas & Colorado Pacific Railway Company.

At Pleasanton, 19 miles east of Blue Mound, the St. Louis & San Francisco road is crossed, this road running in a northerly direction from the south to Kansas City. This point is about six miles west of the state line.

7. There are no large towns on this line, nor county seats, except Mound City, the country traversed being largely agricultural. The principal shipments of freight from this part of the state consists of grain, live stock and hay. There are some manufactured goods for shipment, but of no large quantity, though this output is yearly increasing in volume.

8. Because of the advantages the other lines have in distance to trading centers, and in directness of communication, through passenger traffic would not naturally seek the Madison line. *Its location and connections necessarily place it at a serious*

disadvantage for anything more than local passenger business, no matter what trains may be operated. This line could be operated to connect with defendant's trains running from LeRoy to Kansas City, if proper connections were arranged, so as to encourage traffic and travel by that route, but to what extent any improvement over the past could thus be secured is merely conjectural.

9. From July 1st, 1903, to July 1st, 1905, passenger and freight trains were run separately over this line, one passenger and one freight running each way every day—except perhaps Sunday. Since July 1st, 1905, only one mixed train has been run each day each way, a train leaving each end of the line in the morning about eight o'clock, and scheduled to arrive at the other end at about five in the evening. When the passenger train was on, the scheduled time for the run was five hours. The mixed train carries a passenger coach for the accommodation of passengers. Close connections with trains on the Joplin line were not made at Monteith Junction and Butler, which tended to discourage through travel, but the time scheduled for the Madison line trains was probably best to accommodate the local travel on that line.

10. The evidence does not furnish data made up in the same way of earnings and expenses for the same periods of time in the operation of this line. Consequently only an approximation can be made in a comparison of earnings and expenses. Part of the time the Madison line was an accounting division by itself, and correct accounts of receipts and expenditures ought to be available. They have been fur-

nished for part of the expenses, but not for the earnings, and the latter, especially as to freight, are approximated by pro rating on a mileage basis. Such approximation is inaccurate, and in some instances at least has been made up for this case by a method which is different from that ordinarily used by the company. In the matter of freight earnings it has been and still is the rule of the defendant company in making a division of freight earnings between any particular line and the other lines to apportion such earnings on a mileage basis, but the line on which the shipment originates, or where it terminates, is given a minimum mileage of fifty miles where there is a long haul on other lines and a short haul—twelve to twenty miles, for example—on the line that receives or delivers the shipment. This rule was disregarded in making up the tables in evidence in this case, so that they do not correctly show what freight earnings should be credited to the Madison line during any particular period.

In the matter of the earnings of passenger trains, the money received from express companies for the carriage of express matter is an approximation based upon business done in 1889 and 1890, which cannot be said to be any proper standard of comparison for this case.

11. Making estimate upon such tables and approximations, I find that during one of the periods covered by the evidence—from July 1st, 1903, to May 1st, 1905—when both passenger and freight trains were operated, the earnings were as follows:

Passenger trains	$ 47,984.12
Freight trains	55,924.00
Total	$103,908.12

During the same time the expenses were as follows:

Agents' salaries and commissions	$ 14,829.00
Passenger crews and train expenses	25,613.04
Freight crews	40,735.55
Maintenance of way, etc	62,680.83
General charges	30,000.00
Total	$173,858.42

Showing a loss during that period in actual operation of the line of $69,950.30.

The passenger earnings above stated are ascertained, not including the estimate of the express business as stated in the 10th finding, almost wholly from actual accounts of the passenger train business on this line. The freight earnings are simply estimated by taking the earnings of the Kansas & Colorado system and apportioning to the Madison line its pro rata on a mileage basis. The actual freight earnings are probably considerably greater than stated. In maintenance of way are included the cost of repairs of track, bridges, depots, etc., and all the general work to keep up the road. The $30,000.00 general charges is the approximated pro rata which this line should bear of such expenses as are common to the whole system, as officers', superintendents' and employes' salaries, necessary in the general management of the roads.

12. The earnings of the Kansas & Colorado Pacific Railway Company for the time named in the last finding were $10,673,778.71, and the expenses of operation and maintenance $9,043,107.44, showing net earnings of $1,630,671.27. For the year ending April 1, 1906, the freight earnings and expenses on the Kansas & Colorado Pacific lines were, as approximated on mileage basis:

Earnings	$6,146,283.82
Expenses	5,162,679.96
Net earnings	$ 983,603.86

13. The total freight earnings from freight traffic which originated or terminated on the Madison line, or which passed over some part of that line, amounted to the sum of $125,947.79, from May 1st, 1905, to April 1, 1906. Of this, there has been apportioned to the Madison line, for the purpose of showing in this case the freight earnings thereof, the sum of $22,369.39. This amount is obtained by giving to the Madison line the proportion of the earnings which the haul on that line bears to the entire haul on all the Missouri Pacific lines. Such apportionment does not, however, make a true and just division of earnings to which this line is entitled, and the evidence furnished no data by which a proper division of earnings can be determined. Of the $125,947.79 *thus earned by the defendant's several lines, at least two-thirds of that sum was obtained from interstate traffic.*

14. From May 1, 1905, to April 1, 1906, except in May and June, 1905, only a mixed train was

run on the line in question. In that time the estimated earnings were:

Passenger.	$ 18,954.19
Freight.	32,900.00
	$ 51,854.19

During the same time the estimated expenses were:

Passenger.	$ 37,059.77
Freight.	111,767.00
	$148,826.77

Showing a loss for the eleven months of $96,-972.58.

15. The earnings of the lines in Kansas operated by the defendant company, for the year ending June 30, 1906, were $10,483,311.59, and the operating expenses $8,056,004.59.

16. The Missouri Pacific Railway system includes all these lines of road, and defendant has general management and control of all. As a system, the Missouri Pacific makes fair net profits, for the year ending June 30, 1906, the gross earnings being $21,-506,592.41, and the expenses $15,965,161.82.

17. There are 1990 miles of single track operated by the Missouri Pacific Railway Company in Kansas. The total number of miles of single track operated by the Missouri Pacific Railway Company over its entire system is 3492. The mileage of single tracks of the Kansas & Colorado Pacific is 1434 miles.

18. The passenger earnings of the lines in Kansas operated by the defendant company, for the

year ending June 30, 1906, averaged $1,331.60 per mile of road, as shown by the sworn report of the company filed with the Board of Railroad Commissioners. In the same time the freight earnings of such lines were $3,823.08 per mile of road.

19. *All the estimates made in the foregoing findings of earnings and expense include both state and interstate traffic. No method of separation is possible on the evidence.*

20. THERE ARE NO TERMINAL FACILITIES NOR RAILROAD CONNECTIONS AT THE KANSAS-MISSOURI STATE LINE, NOR NEARER THAN MONTEITH JUNCTION, AND THE ROAD, TO BE OPERATED WITH ANY DEGREE OF SUCCESS, AS A PART OF THE MISSOURI PACIFIC SYSTEM, MUST HAVE TRAINS RUNNING FROM MADISON TO MONTEITH JUNCTION, IN MISSOURI, THE LATTER POINT BEING ABOUT SIXTEEN MILES EAST OF THE STATE LINE. SINCE THE CONSTRUCTION OF THE ROAD, THE MADISON BRANCH TRAINS HAVE BEEN OPERATED FROM MADISON, KANSAS, TO MONTEITH JUNCTION OR BUTLER.

21. The estimated cost of operation per mile for a passenger train is sixty cents. That includes its proportionate part of all expenses and charges. The actual monthly cost of a passenger train crew, together with fuel, water, lighting, heating and care of cars, is about $1,100.00. Other expenses are maintenance of agencies, roadways, repair of engines and cars, which are common to all trains.

22. The evidence shows that motor cars (gasoline engine power) have been operated, for a year or more, by some railroad companies with fair success, and at a cost of operation much less than necessary

in case of the ordinary passenger train. Such motor cars require a crew of only two men, and for fuel consume about half a gallon of gasoline per mile. Their use and operation are feasible on such a line as the one in question, and would furnish a service probably adequate to accommodate all passenger travel on the line.

23. During the time the defendant company maintained separate passenger service on the Madison line, it had the contract to carry the government mails thereon, for which it was paid the sum of $5,000.00 yearly. Under the mixed train service, the government does not use the railroad for mail service to points on this line.

CONCLUSIONS OF LAW.

1. The defendant is not estopped from setting up and making the several defenses contained in the return to the alternative writ, merely because it instituted no proceedings to set aside the order of the Board of Railroad Commissioners respecting the passenger service.

2. In determining whether or not separate passenger service should be given on the Madison Branch, all the revenues—passenger and freight—derived from the operation of that line should be considered. If the communities through which the road runs fur-

nish a highly remunerative freight traffic, so that any deficiency in the passenger traffic, when taken by itself, is made up, and it is not unreasonable to require passenger and freight trains to be operated separately as they usually are, such service should be maintained.

3. The finding of the board that during the years 1902 and 1903 the passenger train was operated at a loss does not shift the burden of proof in this case on the State, when the further finding is made that the people along the line of the road are entitled to a better service than that afforded by only a mixed train, and the defendant company is ordered to provide separate passenger service. It will be presumed that the order was based upon a consideration of the general traffic and revenues of this line of road.

4. Since the defendant has combined this line of road, for operation, management and accounting, with the Kansas & Colorado Pacific Railway Company lines, so as practically to constitute the twelve lines embraced by that company a single unit for purposes of operation, and no definite ascertainment of the actual earnings of the Madison line can be made, a separate passenger service should be maintained if the net earnings of the Kansas & Colorado Pacific Railway justify such service.

5. The Madison line, if dependent upon its own traffic, and not used as a feeder to other Missouri Pacific lines, would not pay the cost of maintaining separate passenger and freight trains, and an order for such service would not be reasonable. But considered as a part of the Missouri Pacific system, I think a requirement of such service would not be unreasonable.

6. The burden of proof being upon the defendant, it has failed to show that the traffic—passenger and freight—originating, or terminating, on the Madison line, does not contribute to the earnings of the other lines of the system operated by the defendant company in sufficient amount to entitle the people along the line to a better service, and has failed to show that the order for such service is not a reasonable requirement.

7. *The Madison line is interstate in construction, connections and operation, the running of trains from Madison to Monteith Junction or Butler being necessary in order to give the operating company any reasonable opportunity to meet expenses of such operation. It would be unreasonable to require a separate passenger train to be operated on this line only within this state.*

8. As the state can exercise no control over interstate operation of railroads, an order cannot be made for the running of trains from Monteith Junction to any point in Kansas. Such order must emanate from the Interstate Commerce Commission.

9. For the reasons stated in the last two preceding conclusions, the writ asked for cannot be allowed.

T. F. GARVER, *Referee.*

Each party is allowed exceptions to each of the foregoing findings and conclusions in order that all questions may be reviewed and considered by the Supreme Court.

T. F. GARVER, *Referee.*"

On the 9th day of November, 1907, there was filed in the office of the clerk of the Supreme Court the opinion of the Supreme Court of Kansas entering judgment in favor of the State against the defendant, which is in words and figures as follows (Abst. pp. 289-290):

This cause comes on for decision, and thereupon it is ordered and adjudged that judgment herein be entered in favor of the plaintiff and against the defendant, and that the peremptory writ of mandamus issue against the defendant, commanding it, viz., the Missouri Pacific Railway Company, immediately upon the receipt of the writ of mandamus, to install a motor and passenger car service upon said Madison line of said railroad from Madison, Kansas, to the Kansas and Missouri state line; and, in the event that the Missouri Pacific Railway Company are unable to put on a motor car passenger service, immediately to install and operate a regular steam, separate passenger train service upon said line. It is further ordered and adjudged that the defendant pay the costs of this proceeding, in this court, taxed at $..... and hereof let execution issue."

The Railway Company, in due time, presented its petition for writ of error from this court to the Supreme Court of Kansas, which was allowed, and the judgment of the State Court superseded by proper bond.

ASSIGNMENTS OF ERROR.

1st.

The Supreme Court of the State of Kansas erred in refusing to hold and decide that, under the Constitution of the United States and the laws of Congress passed in pursuance thereof, the defendant, the Missouri Pacific Railway Company, was justified in refusing to obey the order of the Board of Railroad Commissioners of the State of Kansas made on the 7th day of December, 1905.

2nd.

The said court erred in refusing to decide and hold that the defendant, being an interstate carrier, and the Madison Branch an interstate line, and an integral part of the railway system of the defendant, was thereby withdrawn from the jurisdiction, supervision and control of the Board of Railroad Commissioners of the State of Kansas, and its operation under the exclusive jurisdiction, supervision and control of the Interstate Commerce Commission, and the Act of Congress entitled, "An Act to regulate commerce," and the amendments thereto.

3rd.

The said court, having approved the findings and conclusions of the referee that the said Madison

Branch was interstate in construction, connection and operations, and that it was a part of the railway system of the defendant, and an interstate carrier, and operated as such, committed error in holding and deciding that it had jurisdiction and power to compel the defendant to operate a passenger train from Madison, Kansas, to a point on the Kansas state line, where it had no terminals, depots or connections with any other railway, and, in so deciding, denied to the defendant the equal protection of the law, and deprived it of its property and revenues without just compensation, and without due process of law, and in violation of the Constitution of the United States, and the laws passed in pursuance thereof.

4th.

It appearing conclusively from the evidence, the findings of fact made by the referee, and by the court, that said Madison Branch, from Madison, Kansas, to Butler, Missouri, was an instrumentality of interstate commerce, and maintained and operated as such, the said court erred in holding and deciding that the Board of Railroad Commissioners of the State of Kansas had jurisdiction to make the order of date December 7th, 1905, and in not deciding that said order was inoperative and void, under the Constitution of the United States, and the laws passed in pursuance thereof.

5th.

The said court erred in deciding that the laws of the State of Kansas under which such order was made afforded to the defendant that due process of law given and guaranteed to it under the Constitution of the United States.

6th.

It appearing from the evidence and findings of the referee that such passenger train could not be operated except at a loss, and that the combined revenues of the Missouri Pacific Railway Company and the Kansas & Colorado Pacific Railway Company would not justify the operation of said separate passenger train, the said court committed manifest error in making the order to compel its operation, and its enforcement will deprive this defendant of its property without due process of law, without just compensation, and will deny to it the equal protection of the law—all in violation of the Constitution of the United States.

7th.

The said court, in deciding and holding that the Board of Railroad Commissioners was a mere administrative board and possesed no legislative or judicial functions, committed manifest error in thereon holding and deciding that the said order of date December 7th, 1905, was a reasonable order on its face, and that the burden of proof was upon the defendant to

show that it was unreasonable, thereby depriving the defendant of that due process of law guaranteed by the Constitution of the United States, and denied to it the equal protection of the law.

8th.

The said court erred in holding and deciding that the Act of the Legislature of Kansas creating the Board of Railroad Commissioners was not designed to affect and does not apply to or regulate interstate commerce.

9th.

The said court erred in holding and deciding that the Act of the Legislature of Kansas, and amendments thereto, creating the Board of Railroad Commissioners was not in violation of the Constitution of the United States, upon the ground that it provides for the taking of property of persons or corporations without due process of law.

10th.

The Supreme Court of Kansas erred in assuming jurisdiction of said suit, in so far as it involved the subject of interstate commerce, and the operation of an instrumentality of interstate commerce.

BRIEF AND ARGUMENT.

In order to avoid repetition, the assignments of error will be considered under four sub-divisions.

FIRST.

The order of the board and the mandate of the State Court were, in substance and effect, a regulation of commerce among the states, and the court was without power or jurisdiction in the premises.

The company which built the line from Madison Kansas, to Monteith Junction or Butler, Missouri, was the Interstate Railway Company. The purpose for which the company was incorporated, as expressed in its charter, was to construct and operate an interstate line. The State of Kansas created the corporation for that purpose. The referee found as a fact that:

> "There are no terminal facilities nor railroad connections at the Kansas-Missouri state line, nor nearer than Monteith Junction, and the road, to be operated with any degree of success as a part of the Missouri Pacific system, must have trains running from Madison to Monteith Junction in Missouri—the latter point being about sixteen miles east of the state line. Since the construction of the road, the Madison branch trains have been operated from Madison, Kansas, to Monteith Junction or Butler."

There is no conflict in the evidence, the basis for this finding of fact. It will be conceded that at the state line there were no terminals, no town, hamlet, or city, and no intersecting railroad line. There is no depot or station there, or near there. The nearest town on the railroad west of the state line is Pleasanton—more than six miles distant (Abst. p. 285). It is not found as a fact by the referee, and the evidence does not disclose, that, at the state line, there was anything to attract passenger travel. So far as shown by the evidence, the terminus of the road to be operated under the order and mandate of the court at the state line might be in the center of a corn field. The referee therefore concluded that:

> "The Madison line is interstate in construction, connections and operation—the running of trains from Madison to Monteith Junction or Butler being necessary in order to give the operating company any reasonable opportunity to meet expenses of such operation. It would be unreasonable to require a separate passenger train to be operated on this line only within this state."
>
> "As the state can exercise no control over interstate operation of railroads, an order cannot be made for the running of trains from Monteith Junction to any point in Kansas. Such order must emanate from the Interstate Commerce Commission" (Abst. p. 289).

The State Court, however, concludes that:

> "No matter how much evidence was introduced showing that this line is operated as a continuous line from Monteith Junction in Missouri to the end of the road in Kansas, and is inter-

> state in its connections, still the matter is not thereby necessarily concluded. The order might still be reasonable, dependent upon its earnings derived from that part of the line wholly within the State of Kansas."

It must be apparent that the purpose of the order made by the Board of Railroad Commissioners and the effect of the mandate of the State Court, was and is to compel the Railroad Company to maintain and operate a separate passenger train between Madison, Kansas, and Montieth Junction, in Missouri. In as much as there were no terminals at the state line, and no business there of any account, the referee concludes that:

> "It would be unreasonable to require a separate passenger train to be operated on this line only within the state," and that "the running of trains from Madison, Kansas, to Monteith Junction or Butler being necessary to give the operating company any reasonable opportunity to meet expenses of such operation" (Abst. p. 289).

These findings of fact and conclusions of the referee are not controverted or questioned by the State Court, except upon the theory that: "The order might still be reasonable, dependent upon its earnings derived from that part of the line wholly within the State of Kansas," and, notwithstanding, in the order of the Board of Railroad Commissioners of date December 7th, 1905 (Abst. p. 2), it was found that a separate passenger train was operated at a loss, and "there was no testimony introduced at this hearing

that the train, if put on as asked by the petitioner, could be operated at a profit to the respective companies," and notwithstanding the entire evidence, without conflict, demonstrates that the entire line of the Kansas & Colorado Pacific Railroad, from all sources—state and interstate—was being operated at a loss, and the referee so found as a fact—the State Court issued its mandate that:

> "This cause comes on for decision, and thereupon it is ordered and adjudged that judgment herein be entered in favor of the plaintiff and against the defendant, and that the peremptory writ of mandamus issue against the defendant commanding it, viz.: The Missouri Pacific Railway Company—immediately upon the receipt of the writ of mandamus, to install a motor and passenger car service upon said Madison line of said railroad from Madison, Kansas, to the Kansas and Missouri state line; and, in the event that the Missouri Pacific Railway Company are unable to put on a motor car passenger service, immediately to install and operate a regular steam separate passenger train service upon said line." (Abst. pp. 289-290.)

And the judgment entered in favor of the plaintiff requires the Railway Company to operate a separate passenger train service from Madison, Kansas, to the Kansas and Missouri state line.

In the case of *Atlantic Coast Line* v. *N. C. Comm.*, 206 U. S., 1, the order was: "To so arrange its schedules as to furnish transportation between two points so as to make connections with through trains"; * * * *"to promote the convenience of the traveling public."* No such condition exists in

the case at bar. There is not a particle of evidence in the record indicating that the "convenience of the traveling public" would in any manner be subserved by the operation of a separate passenger train from Madison *to and from the Missouri and Kansas state line*. If the reasonableness of the order of the state court is to rest alone upon the earning power of the line from Madison to the state line, we submit that the evidence proves to a demonstration that to thus operate would result in confiscation and ruin. But who would be benefited by the operation of a separate passenger train to and from the state line? What public interest would be subserved thereby? Do not the physical facts show that the effect of the mandate of the State Court is to compel and control the operation of an interstate train? Can any other reasonable or rational deduction be drawn from the order of the court, when taken in connection with the undisputed facts? The order could not have been made for the purpose of making "connections with through trains" at the state line as there are no connecting roads at or near the state line. It could not have been made "to promote the convenience of the traveling public" *to and from* the state line, as there are no terminals there, no depot, no station, no stopping place, and no evidence of any travel to and from that point.

Why, then, was the state line designated as the terminus of the train service? It was certainly known that any order made by the board or by the court, relative to the operation of an interstate train would be inoperative and void, because neither the

board nor the court would have jurisdiction to thus control the operation of an interstate train. And it was also known that the conclusion of the referee that (Abst. p. 289) "the running of trains from Madison to Monteith Junction or Butler" was "necessary in order to give the operating company any reasonable opportunity to meet operating expenses" was responsive to the evidence. Therefore it would follow that if the mandate was to operate the train to the state line, the Railroad Company, from economic considerations, would be absolutely forced to operate the same from Madison, Kansas, to Butler, Missouri, for "it would be unreasonable" for it to operate a train to the state line, and "only within the state." If this was not the purpose and intent of the order, it is the logical and necessary effect of its enforcement. There can be no other excuse or justification for it, and the making of the order to operate the separate train from Madison to the Missouri and Kansas state line was, on the face of the record, a mere evasion, for the purpose of retaining jurisdiction, to the end that the Railway Company might be indirectly compelled, by the force of circumstances, to operate the train from Madison to Monteith Junction, in Missouri.

In this connection the attention of the court is called to findings of fact made by the referee, which have in no manner been challenged or questioned, that (Abst. pp. 284-285):

> "There are no large towns on this line, nor county seats, except Mound City, the country traversed being largely agricultural. The principal shipments of freight from this part of the

state consists of grain, live stock and hay. There are some manufactured goods for shipment, but of no large quantity, though this output is yearly increasing in volume."

"Because of the advantages which other lines have in distance to trading centers, and in directness of communication, through passenger traffic would not naturally seek the Madison line. Its location and connections necessarily place it at a serious disadvantage for anything more than local passenger business, no matter what trains may be operated. This line could be operated to connect with the defendant's trains running from LeRoy to Kansas City, if proper connections were arranged, so as to encourage traffic and travel by that route, but to what extent any improvement over the past could thus be secured is merely conjectural."

Thus it will be seen that the record does not disclose any public benefit to be subserved by requiring the operation of a separate passenger train from Madison to and from the Kansas state line, or in fact the operation of a separate passenger train for any purpose, and, if the effect of the order necessarily controls the operation of interstate trains, the court was without jurisdiction in the premises.

L. & N. R. R. Co. v. *Eubanks*, 184 U. S., 27.

As was said by this court in the case of *Hall* v. *DeCuir*, 95 U. S., 480-489:

"While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage."

In order that legislation or regulation by a state should amount to an invasion of the powers exclusively vested in Congress over interstate commerce, it is not necessary that the act or regulation directly, in terms, relate to interstate commerce, or that it assumes to be a regulation thereof. *It is not the wording of the regulation, but the necessary effect thereof, which determines its invalidity.*

In the case of *Henderson* v. *Mayor*, 92 U. S., 259, this court said:

> "In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect."

In the State Freight Tax Cases, 15 Wall, 276, it was said:

> "It is not the purpose of the law, but its *effect*, we are now considering."

There can be no escape from the conclusion that the necessary effect of the order and mandate of the State Court was to require the Railway Company to operate and maintain a separate passenger train service between Madison, Kansas, and Monteith Junction or Butler, in Missouri, and, such being the case, the State Court was without jurisdiction in the premises, and the order of the Board of Railroad Commissioners, made on the 7th day of December, 1905, was and is inoperative and void.

In addition to the conclusion of the referee (Abst. p. 289) that: "The Madison line is interstate in construction, connections and operation, the running of trains from Madison to Monteith Junction or Butler being necessary in order to give the operating company any reasonable opportunity to meet expenses of such operation. *It would be unreasonable to require a separate passenger train to be operated on this line only within this state,*" the evidence without contradiction or conflict demonstrates that it would not be feasible or practicable (Abst. pp. 62-78), and that, in order to comply with the order of the board, and mandate of the State Court, it would be necessary to operate the separate passenger train from Madison, Kansas, to Butler, Missouri. Can the State Court, therefore, by its judgment, do that, indirectly, which it has no power to do directly? Can the State Court, by its mandate, place the defendant in a position where, in order to comply with the requirement of the court, it must necessarily do that which the court would have no power or jurisdiction to compel it to do? When it affirmatively appears, as it does in this case, that the Railway Company, as a matter of self-protection, must *necessarily* put on and operate a separate passenger train from Madison, Kansas, to Butler, Missouri, in order to comply with the mandate of the court to put on and operate such train from Madison, Kansas, to the state line, is not the order of the State Court void, and beyond its power and jurisdiction?

Has the State, under the guise of a police regulation, the constitutional power to require a railroad

corporation to do a useless act? Has it the power, under the guarantees of the Federal Constitution, to require a railroad company to do that which, by the findings of fact, is conclusively shown to be confiscatory?

SECOND.

The order of the Board, on its face, is manifestly unreasonable, and, in the light of the findings of fact, arbitrary, and without the first element of due process of law, and a denial of the equal protection of the law guaranteed by the Federal Constitution.

In the recent case of *Welch* v. *Swasey*, 214 U. S., 105, this court said:

> "The statutes have been passed under the exercise of so-called police power, and they must have some fair tendency to accomplish, or aid in the accomplishment of some purpose, for which the legislature may use the power. If the statutes are not of that kind, then their passage cannot be justified under that power. These principles have been so frequently decided as not to require the

citation of many authorities. If the means employed, pursuant to the statute, have no real, substantial relation to a public object which government can accomplish; if the statutes are arbitrary and unreasonable, and beyond the necessities of the case; the courts will declare their invalidity. The following are a few of the many cases upon this subject: *Mugler* v. *Kansas*, 123 U. S., 623, 661; *Minnesota* v. *Barber*, 136 U. S., 313, 320; *Jacobson* v. *Massachusetts*, 197 U. S., 11, 28; *Lochner* v. *New York*, 198 U. S., 45, 57; *Chicago Ry. Co.* v. *Drainage Commrs.*, 200 U. S., 561, 593."

The Statutes of Kansas (Sec. 5998, Genl. Stat. 1901) provide that:

> "It shall be the duty of every railroad company, and each and every officer, etc. * * * *to obey all reasonable* orders of the board of railroad commissioners made under the authority conferred by this act, etc., etc."

The State Court holds that the order of the Board is *prima facie* reasonable, and that the burden was upon the Railway Company to show, by affirmative proof, that the enforcement of the order would be *unreasonable*. We suppose it will be conceded that, whether or not the order is *prima facie* reasonable, is a judicial question to be determined by the court. The State Court has determined this adversely to the Railway Company, and thereby denied to it the protection of the guarantees of the Federal Constitution. We assume that the correctness of the decision of the State Court must be determined from the averments of the complaint filed with the Board, and the findings and conclusions of the Board, and the allegations of

the alternative writ, which state that, for "many years last past the said defendant Railway Company operated a passenger train" over the line, which "*was remunerative to said Company.*"

The Board, after hearing the evidence, found that the Company had operated a passenger train on the Madison Branch of its line, but that

> "the *said passenger train was operated at a loss, and there was no testimony introduced at this hearing that the train, if put on as asked for by the petitioners, could be operated at a profit to the respondent company.*"

These are the findings, and this is the basis of the order which the State Court holds to be *prima facie* a *reasonable* order.

This court has uniformly held that a

> "judgment of a state court, even if it be authorized by statute, whereby private property is taken for the state, or under its direction, for public use, without compensation, made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States, and the affirmance of such judgment by the highest court of the state is a denial by that state of a right secured to the owner by that instrument."
>
> *C. B. & Q. v. Chicago*, 166 U. S., 241.

As was said in *Reagan* v. *Farmers, etc.*, 154 U. S., 362, the power of

> "regulation is not without limit, and is not a power to destroy or the power to compel the doing of the services without reward, or to take private property for public use without just compensation, or without due process of law."
>
> *L. & N. R. Co.* v. *Central Stock Yards*, 212 U. S., 132.

There is nothing in the order which implies or contemplates compensation to the Railway Company. In the Railroad Commission cases, 116 U. S., 307, 331, it was said that:

> "Under pretense of regulating fares and freights, the state cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law."

In the case of *Smythe* v. *Ames*, 169 U. S., 466, at page 546, it was said that:

> "The corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it."
>
> *Dow* v. *Beidelman*, 125 U. S., 680;
> *Ga. R. R. Co.* v. *Smith*, 128 U. S., 174, 179;
> *Ry. Co.* v. *Wellman*, 143 U. S., 339;
> *Budd* v. *New York*, 143 U. S., 517;
> *Ry. Co.* v. *Gill*, 156 U. S., 649;
> *Road Co.* v. *Sandford*, 164 U. S., 578.

Not because the service would be remunerative; not because the health and safety of the people demanded it—but because the board believed "that the people along the line of the Madison Branch of said company are entitled to better passenger train service than they are now receiving," in the face of the finding that such service could not be had at any profit to the Railroad Company, proceeded to order the service, and this is called by the State Court due process of law.

An eminent jurist has said that: "If a condition should be clearly arbitrary and capricious; if no reason with reference to the end in view could be assigned for it, and especially if it appeared that it must have been adopted for some other purpose—such, for instance, as to favor or benefit some person or class of persons—it certainly would not be 'reasonable,' and would be beyond the power of the Legislature to impose."

Again, we call attention of the Court to the fact that it is the settled policy of the state to require railroad companies to transport passengers upon freight trains "upon the same terms and conditions as passengers"—for it is provided by Chapter 274, Laws of 1907, as amended by Chapter 190, Laws of 1909, that:

> "That all freight trains to which a caboose is attached shall be obliged to transport, upon the same terms and conditions as passenger trains, all passengers who desire to travel thereon, and who are above the age of fifteen years, and who, if under fifteen years, are accompanied by a parent or guardian, or other competent per-

son, but no freight train shall be required to stop to receive or discharge any passenger at any other point other than where such freight train may stop; nor shall it be necessary to stop the caboose of such trains at the depot to receive and discharge passengers; provided, that on such trains the railroad companies shall only be liable for their gross negligence; and provided further, that this act shall not be construed to apply to freight trains on main lines, the most of which train shall be composed of cars loaded with live stock.

Any officer or employe of such railroad company who shall violate any of the provisions or conditions of Section 1 of this act shall, upon conviction, be deemed guilty of a misdemeanor, and shall be fined in any sum not less than ten nor more than one hundred dollars, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment."

And yet the court below (76 Kan., 493) holds the order a *reasonable* order, for the reason that "there cannot be suitable and proper operation of the railroad as a carrier of passengers when the car in which it carries its passengers is part of a freight train, because freight trains are inferior to passenger trains, and travel in them is attended with less comfort, convenience and safety than travel in passenger trains. The *inferiority of a freight train to a passenger train, as a mode of carrying passengers, is so obvious that no man of ordinary understanding would regard the use of a freight train, for the purpose of hauling a passenger car, as a suitable and proper operation of a railroad in the matter of transporting passengers.*" Thus it will be seen that the

court places its decision upon a reason that has been expressly repudiated by the legislative branch of the state, and in direct conflict with the settled policy of the state. The court holds that "an accommodation or mixed train for passenger service" is not reasonable, because dangerous; while the Legislature, by positive statute, and under severe penalties for violation, prescribes that "*all* freight trains to which a *caboose* is attached *shall be obliged* to transport, upon the same terms and conditions *as passenger trains*, all passengers who desire to travel thereon, etc."

What is the railroad company to do? The court makes one rule and regulation, and the Legislature a different and conflicting rule. The question naturally arises: Who is the general manager of this property—the court, or the Legislature, or the railroad company?

In the case of *Interstate Commerce Comm.* v. *C. G. W. Ry. Co.*, 209 U. S., 108-113, it was said by this Court that:

> "It must be remembered that railroads are the private property of their owners; that, while from the public character of the work in which they are engaged, the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet *in no proper sense is the public a general manager.*"

The railroad companies should be left "to manage their important interest upon the same principles which are regarded as sound, and adopted in other trades and pursuits."

THIRD.

The order and judgment of the State Court, on the evidence and facts found, deprived the railroad company of its property without due process of law, and without compensation, and denied to it the equal protection of the law.

The Railway Company was only required to obey the "reasonable" orders of the Board. The action of mandamus was instituted upon the theory that it was *prima facie* a "reasonable" order. The hearing before the referee was for the purpose of showing that, if the order was "reasonable" on its face, when considered in connection with the *facts*, it was arbitrary, unreasonable, and deprived the Railway Company of its property without due process of law, and denied to it the equal protection of the law. The *facts*, as found by the referee, would seem to be conclusive of the contention that the order of date December 7th, 1905, was unreasonable, and should not be enforced. The "Madison line, as built and operated," was an interstate road (Abst. p. 283), extending from Montieth Junction, Missouri, to Madison, Kansas, a distance of 108 miles, eighty-nine of which are within the State of Kansas. There are no large towns on this line (Abst. p. 284), nor county seats, except Mound City, the country traversed being largely agricultural. Its location and connections necessarily place it at a serious disadvantage for anything more than local passenger business, *no matter what trains may be operated.*"

It is found as a fact (Abst. p. 285) that, from July 1st, 1903, to May 1st, 1905, when both passenger and freight trains were operated, the earnings were as follows:

Passenger trains	$ 47,984.12
Freight trains	55,924.00
	$103,908.12

During the same time, the expenses were as follows:

Agents' salaries and commission	$ 14,829.00
Passenger crews and train expenses	25,613.04
Freight crews	40,735.55
Maintenance of way, etc	62,680.83
General charges	30,000.00
Total	$173,858.42

Showing a loss during that period in actual operation of the line of $69,950.30.

From May 1st, 1905, to April 1st, 1906, except in May and June, 1905, only a mixed train was run on the line in question. In that time the estimated earnings were:

Passenger	$ 18,954.10
Freight	32,900.00
	$ 51,854.10

During the same time, the estimated expenses were:

Passenger	$ 37,059.77
Freight	111,767.00
	$148,826.77

Showing a loss, and for eleven months, of $96,972.58.

In *none of these estimates is included taxes or interest, or fixed charges.* But it is contended that the

Madison line is a part of the Kansas & Colorado Pacific Railroad, and that the whole should be treated as a unit. The number of miles of road in Kansas operated by the Kansas & Colorado Pacific Company is 1434 (Abst. p. 287). The record shows with great minuteness the fixed charge on each constituent company constituting the Kansas & Colorado Pacific Railway Company (Abst. p. 115), the annual interest on which was $1,463,720.00, to which should be added taxes as follows:

1904.	$304,312.05
1905.	314,148.49
5 months of 1906.	160,462.91

It is found by the referee that the net earnings of the Kansas & Colorado Pacific Company in Kansas for the year ending April 1st, 1906, were $1,630,671.27, from which deduct the fixed charges, $1,463,720, and we have $166,951.27, with which to pay taxes of approximately $314,000 per annum. The earnings of all the lines in Kansas operated by the defendant (1990 miles of single track) for the year ending June 1st, 1906, were $10,483,311.59, and the operating expenses $8,056,004.59, leaving $2,427,308 with which to pay fixed charges and taxes on 1990 miles of road, *and all the estimates made in the foregoing findings of earnings and expenses include both state and interstate traffic* (Finding 19, Abst. p. 287). An examination of the record (pp. 108-116 inclusive, and 229-279 inclusive) will show in minutest detail, not only the cost and expense of operating the lines of the Kansas & Colorado Pacific Railroad in Kansas, and the earn-

ings, but also of the Missouri Pacific system, and the bonded indebtedness of each line within and without the state.

In addition, we invite the attention of the court to the testimony of the accounting and operating officers and employes of the company (Abst. pp. 23-107). Notwithstanding the great detail disclosed by the record to show the earnings and expenses of each particular line in Kansas, it is stated by the State Court in the opinion (Abst. p. 312) that:

> "Defendant had the opportunity given it to prove, and may have been able to prove, that its earnings from business arising wholly within the state are much less than the expenses properly chargeable to that portion of its line, but instead of doing so, it failed, and the only inference that can be drawn from the referee's findings of fact is that it made no honest effort to do this, but on the contrary, introduced approximate estimates prepared for the occasion, contrary to the ordinary rules for proportioning the earnings and expenses between other roads and a line of road operated as this was. The effect of this class of evidence was to deprive this branch line of the credit to which it is entitled by the findings of the referee, and the utmost that can be said for the evidence as a whole is that it left the controversy in doubt and conjecture. The *prima facie* effect of an order of this kind should not be overcome by evidence so unsatisfactory as that furnished from estimates of this character and from figures showing the earnings from express charges in 1889 and 1890, with no attempt to procure more recent data or to explain the reasons why it was not available, and with no attempt to show the earnings or expenses of the road properly chargeable to that portion lying within the state."

We are at a loss to know why this statement was incorporated in the opinion, for certainly there is no warrant for it in the evidence. It is stated that the company "made no honest effort" to produce the evidence, "but, on the contrary, introduced approximate estimates prepared for the occasion, contrary to the ordinary rules for proportioning the earnings and expenses between other roads and a line of road operated as this was." What are the facts? When it was proposed to produce the original books of the company (Abst. p. 38) "plaintiffs' counsel states that the State will not insist upon bringing in the original documents, etc., but only insists that the abstract submitted from these records be shown to be correct." Again, it was shown, and not contradicted (Abst. p. 50) that, "The basis of apportionment from which these calculations of expense are made the basis employed by the Missouri Pacific Company, and all other railroad companies," and that it was "the generally accepted basis of all railroads in compiling their operating statements." In addition to this, the record shows (Abst. p. 138) that the State called the accounting officers of the Railway Company, and was given access to the books, to disprove any statement or abstract taken from them, and it was not attempted.

Again the court say:

> "The *prima facie* effect of an order of this kind should not be overcome by evidence so unsatisfactory as that furnished from estimates of this character, and from figures showing the earnings from express charges in 1889 and 1890, with

> *no attempt* to procure more recent data, or to explain the reasons why it was not available, and with *no attempt* to show the earnings or expenses of the road properly chargeable to that portion lying within the state."

There will be found in the record (Abst. p. 185-188) *a detailed statement, by months, of every item of expense connected with the operation of the Madison branch from January*, 1903, *to June*, 1905. Again, there *will be found, in tabulated form, by months, the "express earnings"* (Abst. pp. 108-113) from July, 1903, to March, 1906. The evidence produced was the best evidence of the fact sought to be proven. It was impracticable to offer in evidence many hundreds of volumes of books, and the best that could be done was to produce abstracts, prepared by experts, giving estimates, as was done in *Smythe* v. *Ames*, 169 U. S., 529-532. And the following exhibits were prepared and used, and their substantial correctness never questioned:

EXHIBIT A
(Abst., p. 108)

Contains a statement of earnings and expenses of passenger business of the Madison line of the Kansas & Colorado Pacific Railway from Madison, Kansas, to Montieth Junction, Missouri, during the period July 1st, 1903, to April 30th, 1905.

EXHIBIT B
(Abst. p. 109)

Contains a statement of earnings and expenses of passenger business of that portion of the Madison line of the Kansas & Colorado Pacific Railway from Madison, Kansas, to the Kansas state line, during the period July 1st, 1903, to April 30th, 1905.

EXHIBIT C
(Abst. p. 110)

Contains a statement of earnings and expenses of passenger business of the Madison line of the Kansas & Colorado Pacific Railway from Madison, Kansas, to Montieth Junction, Missouri, during the period July 1st, 1903, to April 30th, 1905.

EXHIBIT D
(Abst. p. 111)

Contains a statement of earnings and expenses of passenger business of that portion of the Madison line of the Kansas & Colorado Pacific Railway from Madison, Kansas, to the Kansas state line, during the period July 1st, 1903, to April 30th, 1905.

EXHIBIT E
(Abst. p. 112)

Contains a statement of earnings and expenses of passenger business of the Madison line of the Kansas & Colorado Pacific Railway from Madison, Kansas, to

Monteith Junction, Missouri, during the period May 1st, 1905, to March 31st, 1906.

EXHIBIT F
(Abst. p. 113)

Contains a statement of earnings and expenses of passenger business of that portion of the Madison line of the Kansas & Colorado Pacific Railway from Madison, Kansas, to the Missouri state line during the period May 1st, 1905, to March 31st, 1906.

EXHIBIT G
(Abst. p. 115)

Contains a statement of freight earnings and expenses of the Kansas portion of the Madison line of the Kansas & Colorado Pacific Railway for the period May 1st, 1905, to and including March 31st, 1906, by months.

EXHIBIT H.
(Abst. p. 115)

It will be observed that "Exhibit H" gives the earnings of each constituent company composing the consolidated company known as the Kansas & Colorado Pacific Railway Company, and, in every conceivable way known to expert bookkeepers, the figures were given and are in the record showing the cost of the operation, not only of the Madison line of road, but of all the road in Kansas under the control and domination of the Missouri Pacific Railway Company, as well

as the entire Missouri Pacific system. The mileage of each is given, and there is no possible basis upon which a contention can properly be made that the Kansas lines of the Missouri Pacific Company were, during the years in controversy, operated otherwise than at a great loss.

We invite the court's attention especially to the exhibits showing "statement of passenger train service Monteith Junction to Madison, Kansas, June 1st, 1903, to June 1st, 1905" (Abst. p. 185); and statement of "passenger engine service," Monteith Junction to Madison, Kansas, from June 1st, 1903, to June 1st, 1905 (Abst. p. 186); and to statement of freight train service Monteith Junction to Madison, Kansas, January 1st, 1903, to June 30th, 1905 (Abst. p. 187); and to statement of freight engine service, Monteith Junction to Madison, Kansas, January 1st, 1903, to June 30th, 1905 (Abst. p. 188); and to the statement showing number of trains operated between Butler, Missouri, and Madison, Kansas, May 1st, 1903, to May 15th, 1906 (Abst. pp. 185-223).

It will be seen from these exhibits that every single item of expense is given for the operation of passenger and freight trains on that line, by months, and yet the court below states that the defendant company "made no honest effort to do this, but, on the contrary, introduced approximate estimates prepared for the occasion, contrary to the ordinary rules of proportioning the earnings and expenses between other roads and a line of road operated as this was."

We most respectfully challenge the closest scrutiny of the entire abstract and record to disprove this

conclusion drawn by the learned State Court. The evidence will show that every conceivable means known to railroad accounting was resorted to for the purpose of ascertaining the cost of the operation of this Madison line, either independently or as a part of one comprehensive unit.

It is alleged in the petition for alternative writ of mandamus (Abst., p. 1) that the service of the defendant company between Madison, Kansas, and the Missouri and Kansas state line was remunerative, and that the citizens residing on the line of road, on the 14th day of September, 1905, presented their petition to the Board of Railroad Commissioners, wherein they alleged, in substance, that:

> "For many years last past the said defendant Railway Company operated a passenger train over its said line through the County of Linn, State of Kansas, to said Madison, Kansas, which service said complainants alleged was remunerative to said Railway Company."

After a full hearing (Abst. p. 2) the Board made a specific finding that, during the years mentioned in the order, "said passenger train was operated at a loss, and there was no testimony introduced at this hearing that the train, if put on as asked for by the petitioners, could be operated at a profit to the respondent company." It will be presumed, we think, that the Board of Railroad Commissioners, at the hearing, and before the making of this order, secured all the evidence that was possible for an intelligent consideration of the complaint.

The entire record, therefore, including the order of the Board, and the evidence introduced before the referee, together with the findings of fact made by the referee, demonstrate the fact not only that a separate passenger train on the Madison line could not be operated otherwise than at a loss, but that the operation of the entire line in Kansas of the Kansas & Colorado Pacific Railway Company had been operated at a loss; and yet, notwithstanding the conclusion of the referee that, under the circumstances, *it would be unreasonable* to require the operation of a separate passenger train between Madison, Kansas, and the Missouri and Kansas state line, the court issues its mandate requiring the Railway Company to devote its property for the use of the public, without any corresponding benefit to it, and in the face of the *conceded* and *undisputed* facts that the order could not be obeyed without great loss to the company. Does not such an order deprive the defendant company of its property without due process of law, and compel it to perform a service for the public without compensation, and deny to it the equal protection of the law?

The evidence shows, without conflict, that it was not feasible or practicable "to establish terminal facilities on the Kansas side of the Missouri line, and operate the Madison branch for passenger purposes within the State of Kansas" (Abst. p. 63 and Abst. p. 79), and the referee so finds (Abst. pp. 287-289). It would nearly double the expense of operation without a possibility of increasing the revenues.

In *Atlantic Coast, etc.*, v. *N. C. Comm.*, 206 U. S., 1, the principle was announced that:

> "As the public power to regulate railways and the private right of ownership of such property co-exist, and do not the one destroy the other, it has been settled that the right of ownership of railway property, like other property rights, finds protection in constitutional guarantees, and, therefore, wherever the power of regulation is exerted in such an arbitrary and unreasonable way as to cause it to be in effect not a regulation, but an infringement upon the right of ownership, such an exertion of power is void, because repugnant to the due process and equal protection clauses of the Fourteenth Amendment."

The enforcement of the order here complained of, under the circumstances, disclosed by the record, would not be regulation, but confiscation.

In *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S., 362, it was said that this

> "is a government of law, and not a government of men, and it must never be forgotten that, under such a government, with its constitutional limitations, and guarantees, the forms of law and the machinery of government, with all their reach and power, must, in their actual workings, stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property legally acquired and legally held."

The power "of regulation is not without limit, and is not a power to destroy or the power to compel the doing of the services without reward, or to take private property for public use, without just compensation, or without due process of law."

Budd v. *New York*, 143 U. S., 517.

In *C., B. & Q. R. R.* v. *Chicago*, 166 U. S., 241, it was held that:

> "A judgment of a State Court, even if it be authorized by statute, whereby private property is taken for the state, or under its direction, for public use, without compensation, made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States, and the affirmance of such judgment by the highest court of the state is a denial by that state of a right secured to the owner of that instrument."
>
> *McNeil* v. *Southern Ry. Co.*, 202 U. S., 543, 559;
>
> *Louisville & Nashville R. R. Co.*, v. *Stock Yards*, 212 U. S., 132, 144-145.

It will be observed that the referee finds that:

> "Since the defendant has combined this line of road, for operation, management and accounting, with the Kansas & Colorado Pacific Railway Company lines, so as practically to constitute the twelve lines embraced by that company a single unit, for purposes of operation, and no definite ascertainment of the actual earnings of the Madison line can be made, a separate passenger service should be maintained if the net earnings of the Kansas & Colorado Pacific Railway justify such service."
>
> "The Madison line, if dependent upon its own traffic, and not used as a feeder to other Missouri Pacific lines, would not pay the costs of maintaining separate passenger and freight trains, and an order for such service would not be reasonable. *But considered as a part of the Missouri Pacific system, I think a requirement of such service would not be unreasonable.*"

The court will see that the referee and the court below first considers the question with reference to the mileage of the Kansas & Colorado Pacific, a Kansas corporation, and then with reference to the mileage and earnings of the entire Missouri Pacific system, *within and without the state*, and its earnings, both *state and interstate*. By finding of fact No. 13 (Abst. p. 21) the referee finds that the freight earnings on the Madison line from May 1st, 1905, to April 1st, 1906, were $125,947.79, which "amount is obtained by giving the Madison line the proportion of the earnings *which the haul on that line bears to the entire Missouri Pacific lines*"; * * * "Of the $125,947.79 thus earned by the defendant's several lines, at least two-thirds of that sum was obtained from interstate traffic." Thus it will be seen that the reasoning and conclusion of the referee and the court is upon the theory that the entire Missouri Pacific lines is an entirety; and, even upon that theory, the Madison branch did not earn operating expenses, to say nothing of fixed charges and taxes.

In *Smythe* v. *Ames*, 169 U. S., 466, Mr. Justice Harlan said that—

> "The argument that a railroad line is an entirety; that its income goes into, and its expenses are provided for out of, a common fund; and that its capitalization is on its entire line, within and without the state,—can have no application where the state is without authority over rates on the entire line, and can deal only with local rates, and make such regulations as are necessary to give just compensation to local business."

However, we challenge the closest scrutiny of the evidence and the findings of fact, and we assert with absolute confidence that it was shown to a demonstration:

FIRST. That the earnings of the Madison branch, including freight and passenger business, state and interstate, from all sources, did not pay operating expenses, to say nothing of taxes and fixed charges.

SECOND. That the earnings of the Kansas & Colorado Pacific (1440 miles), including freight and passenger business, state and interstate, from all sources, did not pay operating expenses, to say nothing of taxes and fixed charges.

THIRD. Although the Missouri Pacific Railway Company does not own the lines of the Kansas & Colorado Pacific, but operates them, and, although the referee finds (Finding No. 19) that "all estimates made in the foregoing findings of earnings and expenses include both state and interstate traffic," the court below holds that, because the Missouri Pacific did not keep a system of books, whereby there could be a separation of state and interstate traffic, the *prima facie reasonableness* of the order of the Board was not overcome, notwithstanding it appeared incontestably from the evidence and findings that the traffic of the Madison branch and the Kansas & Colorado Pacific and of the Missouri Pacific, on the lines in Kansas, state and interstate, did not pay operating expenses, taxes and fixed charges.

FOURTH.

The order of the Board of Railroad Commissioners was a usurpation of power by the Board, and the construction placed upon the law by the State Court impaired the obligation of the contract between the state and the railway company, in violation of the Constitution of the United States, and deprived it of its property without due process of law and without compensation, and denied to it the equal protection of the law.

In 1868 the Legislature of Kansas, in defining the power of railroad companies (Section 1316, General Statutes, 1901), provided that:

> "Every railway corporation shall, in addition to the powers hereinbefore conferred, have power
> * * *
> Eighth. To regulate the time and manner in which the passengers and property shall be transported, and the compensation to be paid therefor; said compensation not to exceed the rates fixed by law."

Section 1322 of the same act is as follows, viz.:

> "Every railway corporation in this state which now is or may hereafter be engaged in the transportation of passengers or property, shall give public notice of the regular time of starting and running its cars, and shall furnish sufficient accommodation for the transportation of all such passengers, baggage, mails and express freight as shall within a reasonable time previous thereto be offered for transportation at the place of start-

ing, at the junction of other roads, and at the several stopping places; and they are hereby required to stop all trains carrying passengers at the junction or intersection of other railways, a sufficient length of time to allow the transfer of passengers, personal baggage, mails and express freight, from the trains of railways so connecting or intersecting, or they may mutually arrange for the transportation of such persons and property over both roads without change of cars; and they shall be compelled to receive all passengers and freight from such connecting and intersecting roads, whenever the same shall be delivered to them."

In 1901 the Legislature of Kansas passed an act in which it was provided by Section 134 that (General Statutes, 1901, Section 5970):

"Whenever in the judgment of the railroad commissioners it shall appear that any railroad corporation or other transportation company fails in any respect or particular to comply with the terms of its charter or the laws of the state, or whenever in their judgment any repairs are necessary upon its road, or any addition to its rolling stock, or any addition to or change of its stations or station houses, or any change in its rates for transporting freight, or any change in the mode of operating its road and conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, said commissioners shall inform such corporation of the improvement and changes which they adjudge to be proper, by a notice thereof in writing, to be served by leaving a copy thereof, certified by the commissioners' secretary, with any station agent, clerk, treasurer or any director or said corporation; and if such orders are not

> complied with, the said commissioners, upon complaint, shall proceed to enforce the same in accordance with the provisions of this act as in other cases."

It was under this section that the Board of Railroad Commissioners made the order of date December 7th, 1905. The State Court, while holding that "railroads still possess the power to regulate the *time* and *manner* in which passengers shall be transported, as conferred upon them by Section 1316, *supra*," held that the order of the Board of December 7th, 1905, made under Section 5970, General Statutes of 1901, *supra*, did not impair the obligation of the contract between the Railway Company and the State; did not deprive the Railway Company of any vested right, under Section 1316, *supra*, and was the exercise "of its police power to enforce local regulations necessary for the convenience, safety and comfort of the public."

Passing upon this question, the court said (Abst. p. 308):

> "The question of repeals by implication is not involved. Railroads still possess the power to regulate the *time* and *manner* in which passengers shall be transported, as conferred upon them by Section 1316, *supra*, but this never meant that a railroad company has the right to furnish flat cars, for instance, for the transportation of passengers. The construction which defendant asks us to place upon Section 1316 is contrary to the rule that a construction will not be given which yields the power of the legislature to enact legislation upon the same subject. A railroad charter is taken and held subject to the power of the state

to regulate and control the grant in the interest of the public. (*Louisville & Nash. R'd Co.* v. *Kentucky*, 183 U. S., 503, 22 Sup. Ct. 95, 46 L. Ed. 298). But a strong reason is that it must be construed with Section 1322 of the same act, which requires railroad companies to furnish sufficient accommodation for the transportation of passengers.

Railroad companies *still* possess the power to regulate the *time* and *manner* in which passengers shall be transported, as conferred upon them by Section 1316, *supra*."

For the purpose of the argument, it may be conceded that, under the reserved power given *to the legislature* by Section 1, Article 12 of the Constitution of the State, the *legislature* had the power to "amend or repeal" these laws; but this power has never been exercised by the *legislature*. Our contention is that there was in legal effect written into the charter of the Railway Company the power to "regulate the *time* and *manner* in which the passengers and property shall be transported, etc.," and such right became a contract between the State and the Railway Company, in which the Railway Company had a vested right until such time as *the legislature* saw proper, by virtue of the power conferred under Section 1, Article 12 of the Constitution, to amend or repeal the law, and take away from the Railway Company the right and power conferred upon it by Section 1316, General Statutes 1901, *supra*. That this act—this power—became a contract between the

Railway Company and the state we think will not be denied.

Fletcher v. *Peck*, 6 Cranch (U. S.), 87;
Dartmouth College v. *Woodward*, 4 Wheat. (U. S.), 518;
Charles River Bridge v. *Warren*, 11 Pet. (U. S.), 420.

Nor do we think it will be denied that the Railway Company had a vested right in the power thus conferred, until repealed or taken away *by the legislature* (*Dodge* v. *Woolsey*, 18 How. (U. S.), 360); and that it cannot be taken away by judicial construction.

We are aware that this court holds that judicial decisions construing a contract or statute are not "laws," within the meaning of the Federal Constitution prohibiting any state from passing a "law impairing the obligation of contracts."

University v. *People*, 99 U. S., 320;
Central Land Co. v. *Leidy*, 159 U. S., 109;
Hanford v. *Davis*, 163 U. S., 279.

These cases do not conflict with, and are not opposed to our contention. It will not be claimed that the duty of the Railway Company to furnish any particular kind of passenger train service is enjoined by any other statute than Section 1322, General Statutes 1901, and the highest court in the state holds, in this case (Abst. p. 308), that Section 1316, General Statutes 1901 (Laws of 1868) has not been

repealed, and that "railroad companies still possess the power to regulate the *time* and *manner* in which passengers shall be transported, as conferred upon them by Section 1316, *supra*"; but the court then proceeds to construe the power thereby given "to regulate the *time* and *manner* in which passengers shall be transported," to be subject and subordinate to the power of the Board of Railroad Commissioners, as given by Section 5970, General Statutes 1901. The State Court holds that it was not the intention of the legislature, expressly or by implication, to repeal or amend the law of 1868, Section 1316, *supra* (General Statutes 1901), but that, notwithstanding that statute, the Board of Railroad Commissioners, under Section 5970, General Statutes 1901, has the power "to regulate the *time* and *manner* in which passengers shall be transported." If the court had held that, by Section 5970, enacted in 1901, the legislature had repealed the law of 1868, Section 1316, General Statutes 1901, a different question would be presented. Assuming that Section 1316, General Statutes 1901 (Laws 1868), under which the Railway Company was chartered, became a contract between the State and the Company, and that, as held by the highest court of the state, it has not been amended or repealed by the legislature, the construction by the Supreme Court of Kansas of that contract—of that statute—impairs its obligation, and this court should reverse that judgment.

In the case of *State Bank* v. *Knorp*, 16 How. (U. S.), 391, it was said:

"But we are called in the case before us, not to carry into effect a law of the state, but to test the validity of such a law by the Constitution of the Union. We are exercising an appellate jurisdiction. The decision of the Supreme Court of the state is before us for revision, and, if their construction of the contract in question impairs its obligation, we are required to reverse that judgment. To follow the construction of a state court in such a case would be to surrender one of the most important provisions in the Federal Constitution."

In the case of *Bridge Proprietors* v. *Hoboken Co.*, 1 Wal., 116, it was said that:

"Where a statute of a state created a contract, and a subsequent statute is alleged to impair the obligation of that contract, and the highest court of the state *construes* the *first* statute in such a manner as that the second statute does *not* impair it, whereby the second statute remains valid, under the Constitution of the United States; the validity of the second statute is 'drawn in question,' and the decision is 'in favor' of its validity, within the meaning of the 25th section of the Judiciary Act of 1789. This court may accordingly, under the said section, re-examine and reverse the judgment or decree of the State Court given as before said."

In this case Justice Miller approved the language of this court in *Jefferson Branch Bank* v. *Shelley*, 1 Black, 436, in which it was said:

"Of what use would the appellate power of this court be to the litigant who feels himself aggrieved by some particular state legislation if this

court could not decide independently of all adjudication by the Supreme Court of a state, whether or not the instrument in controversy was expressly of a contract, and within the protection of the Constitution of the United States, and that its obligation should not be enforced, notwithstanding conclusion by the Supreme Court of a state? It never was intended, and cannot be sustained by any course of reasoning, that this court should or could, with fidelity to the Constitution of the United States, follow the Supreme Court of a state in such matter, when it entertains a different view."

University v. *People*, 99 U. S., 321.

In the case of *N. O. Waterworks* v. *La. Sugar Co.*, 125 U. S., 36, it was said, referring to numerous cases denying jurisdiction, that:

"These cases are quite in harmony with the line of cases, beginning before these were decided, in which, on a writ of error upon a judgment of the highest court of a state, giving effect to a statute of the state, drawn in question as affecting the obligation of a previous contract, this court, exercising its paramount authority of determining whether the statute upheld by the State Court did impair the obligation of the previous contract, is not concluded by the opinion of the State Court as to the validity or the construction of that contract, even if contained in a statute of the state, but determines for itself what that contract was."

In the case of *L. & N. R. R. Co.* v. *Palmer*, 109 U. S., 256-7, it was said:

"The question we have to consider and decide is whether, in the judgment under review, the Supreme Court of Florida gave effect to a law of the

state which, in violation of the Constitution of the United States, impairs the obligation of a contract. In reaching a conclusion on that point, we decide for ourselves, independently of the decision of the State Court, whether there is a contract, and whether its obligation is impaired; and if the decision of the question as to the existence of the alleged contract requires a construction of State Constitutions and laws, we are not necessarily governed by previous decisions of the State Courts upon the same or similar points, except where they have been so firmly established as to constitute a rule of property. Such has been the uniform and well settled doctrine of this court. *Bank* v. *Knorp*, 16 How., 369-391.

As was said by Chief Justice Taney in the case of *L. Ins. & T. Co.* v. *Debolt*, 16 How., 416-432: But this rule of interpretation is confined to ordinary acts of legislation, and does not extend to the contracts of the state, although they should be made in the form of a law. For it would be impossible for this court to exercise any appellate power in a case of this kind, unless it was at liberty to interpret for itself the instrument relied on as a contract between the parties. It must necessarily decide whether the words used are words of contract, and what is their true meaning, before it can determine whether the obligation, the instrument created, has or has not been impaired by the law complained of. Now, in forming its judgment upon this subject, it can make no difference whether the instrument claimed to be a contract is in the form of a law, passed by the legislature, or of a covenant or agreement by one of its agents acting under the authority of the state."

The legislature said in no ambiguous language that: "Every railroad company *shall*" "have the

power" "to regulate the *time* and *manner* in which passengers and property may be transported, and the conpensation to be paid therefor; *said compensation not to exceed the rates fixed by law.*" This law was passed in 1868, and many millions of dollars invested in railroad property in Kansas, relying upon the rights and powers thereby conferred. It remains the law of Kansas today, and the Supreme Court of Kansas (Abst. p. 308) holds that: "Railroads *still* possess the power to regulate the *time* and *manner* in which passengers shall be transported, as conferred upon them by Section 1316, *supra*"; but places a construction upon the *power* that takes away the *right*, and confirms an order of the Board which confiscates the Railway Company's property, and denies to it the contract *right* "to regulate the *time* and *manner* of transporting passengers" given to it by the express terms of its contract with the state. What did the legislature mean by the term "time and manner"? The Supreme Court of Connecticut (5 Conn., 253) construes the word "manner" as "synonymous with *method*, or *peculiar way;* and hence he who is authorized to prescribe the *manner* has authority to direct the *peculiar way* in which a thing is to be done."

R. R. Co. v. *Cincinnati*, 1 Ohio Prob. R., 269-278.

In *City* v. *Caulkins*, 85 Pa. St., 253, the word "manner" was construed to "mean the power to control the work, not only as to its character, *but also as to the particular means to accomplish it.*"

In *Bankers Life Co.* v. *Robbins*, 59 Neb., 174, it was said that:

> "The *manner* of doing a thing has reference to the *way* of doing, to the method of procedure, and the element of time does not seem to be involved."

In *Pitcher* v. *Board*, 20 Ill. App., 326, it was said that:

> "Lexicographers give to the word 'manner' a broader meaning than that of 'method.' The derivation is from the Latin *manus*, the hand. '*Manner*' is literally the handling of a thing, and has a wider sense, embracing both method and *mode*." Webster's Dictionary (New Ed.), "Method."

The Supreme Court of Kansas, however, in construing Section 1316, *supra*, holds that the term "*time* and *manner*" does not mean anything, and bases its decision upon *People* v. *R. R. Co.*, 176 Ill., 176, and states (Abst. p. 308) that:

> "Exactly the same defense was set up in the Illinois case, *supra*," and that: "The question in that case was the 'absolute right of the state to demand such service under statutory and charter provisions similar to ours.' "

With all due respect for the State Court, we submit that the defense in that case has no analogy to the defense in this case, as there was no contention that, *by statute* of Illinois, the Railroad Company had the right and power to "regulate the *time* and *manner*

in which passengers and property shall be transported." The State Court bases its decision largely upon Section 1322, General Statutes 1901 (Abst. p. 306). That section was in the Act of 1868, which contained Section 1316, *supra*, and the two sections should be construed together, and to the same effect as if one section, and, so construed, it is impossible to reach any other rational conclusion than that it was the intention and purpose of the legislature to vest in railroad company the right and power "to regulate the *time* and *manner* in which passengers and property shall be transported, etc." Any other construction does violence to the English language, and impairs the obligation of the contract between the State and the Railroad Company, whose rights under which are protected by the guarantees of the Constitution of the United States.

There is no statute of Kansas (other than Section 1322, General Statutes 1901) which enjoins upon a railroad company the duty of operating any particular kind of train, unless the words "shall furnish sufficient accommodation for the transportation of all such passengers," found in Section 1322 (Abst. p. 306), fix the duty; and this court, in *R. R. Co. v. Dustin*, 142 U. S., 492, held that:

> "Mandamus will not lie to compel a railroad corporation to build a station at a particular place, unless there is a *specific* duty imposed by statute to do so, and clear proof of a breach of that duty."

Section 5970, General Statutes 1901, does not prescribe the duty of a railroad company, but only

provides a remedy, "whenever, in the judgment of the Railroad Commissioners, it shall appear that any railroad corporation * * * fails in any respect or particular to comply with the terms of its charter, or the laws of the state, etc."

The Constitution of the State provides that: (Sec. 2, Bill of Rights):

> "No special privileges or immunities shall ever be granted by the legislature which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency."

It also provides (Sec. 1, Art. 2):

> "The legislative power of this state shall be vested in a house of representatives and senate."

It also provides (Sec. 1, Art. 12):

> "Corporations may be created under general laws; but all such laws may be amended or repealed."

The State Court, in this case (*State* v. *Ry. Co.*, 76 Kan., 494) held that Section 1316 of the General Statutes of 1901 has not been amended or repealed, and that "railroads still possess the power to regulate the *time* and *manner* in which passengers shall be transported, as conferred upon them by Section 1316, *supra*." The court further conceded, as the settled rule of law of the State (76 Kan., 474) that:

> "The Constitution vests all legislative power in a legislature, consisting of a senate and a house of representatives. It cannot be doubted that the legislature is not authorized to delegate this legislative power. It may not confer upon any person, board or commission the power of determining what the law shall be."

Now, if it be conceded, as it must be, that Section 1316, General Statutes 1901—to the effect that every railway corporation shall have the power "to regulate the *time* and *manner* in which the passengers and property shall be transported"—became a part of the contract between the State and the Railway Company, is it not binding and obligatory upon the State until the charter (contract) rights of the Company are "amended or repealed" *by the Legislature* in the manner authorized by the Constitution, as construed by the highest judicial tribunal of the State? We think it will not be questioned that the power reserved in the Constitution to "amend or repeal" contemplates only *legislative* action—the exercise of a legislative function, which the Supreme Court of Kansas holds (76 Kansas, 474) cannot be delegated to or conferred "upon any person, board or commission."

Therefore, if Section 1316, General Statutes 1901, has not been "amended or repealed" *by the Legislature*, can the vested rights of the Railway Company in that section, by any regulatory order of the Board of Railroad Commissioners—a mere administrative tribunal—be taken away and destroyed?

In the case of *Georgia, Etc.*, v. *Smith*, 128 U. S., 174, Mr. Justice Field said:

> "It is conceded that a railroad corporation is a private corporation, though its uses are public, and that a contract embodied in terms in its provisions, or necessarily implied by them, is within the constitutional clause prohibiting legislation impairing the obligations of contracts. If the charter in this way provides that the charges which the company may make for its services in the transportation of persons and property shall be subject only to its own control up to the limit designated, exemption from legislative interference within that limit will be maintained."

In the case of *Reagan* v. *Trust Co.* 154 U. S., 362, Mr. Justice Brewster said:

> "If the charter had in terms granted to the corporation power to charge and collect a definite sum per mile for the transportation of persons or property, it would not be doubted that the express stipulation formed a part of the obligation of the State, which it could not repudiate."

In the case of *Chicago, Etc., R. Co.* v. *Iowa*, 94 U. S., 155, Chief Justice Waite used similar language. He said:

> "It was within the power of the company to call upon the legislature to fix permanently this limit, and make it a part of the charter, and, if it was refused, to abstain from building the road and establishing the contemplated business. If that had been done, the charter might have presented a contract against future legislative interference; but it was not, and the company invested its capi-

tal relying upon the good faith of the people, and the wisdom and impartiality of legislators for protection against wrong under the form of legislative regulation."

Again, in *Peik* v. *Ry. Co.*, 94 U. S., 164, he said:

"In *Munn* v. *Illinois*, 94 U. S., 113, and *Chicago, etc., R. Co.* v. *Iowa*, Id. 155, we decided that the State may limit the amount of charges by railroad companies for fares and freights, unless restrained by some contract in the charter, even though their income may have been pledged as security for the payment of obligations incurred upon the faith of the charter. So far this case is disposed of by those decisions."

The same power is recognized in the case of *Ruggles* v. *Illinois*, 108 U. S., 526.

In the case of *Chicago, Etc.*, v. *Iowa*, 94 U. S., 161, it was said that:

"It is now too late to contend that the charter of a private corporation is not a contract, within the meaning of that clause in the Constitution of the United States, which prohibits a state from passing any law impairing the obligations of a contract."

In the case of *Salt Co.* v. *East Saginaw*, 13 Wal., 378, it was said by Mr. Justice Bradley that:

"Corporations formed under general laws in place of special charters * * * are entitled to the benefit of specific provisions, and exemptions, contained in those laws, which are regarded in the same light as if inserted in special charters."

Stanislaws Co. v. *San Joaquim*, 192 U. S., 201, 206.

The object of the reservation in the Constitution to "amend or repeal," as said by this court in *Tomlinson* v. *Jessup*, 15 Wal., 458, is

> "To prevent a grant of corporate rights and privileges in a form which will preclude *legislative* interference with their exercise, if the public should at any time require such interference."

As has been seen, the Constitution of the State contains the reservation of the power to "amend or repeal," but the Supreme Court of Kansas holds (76 Kan., 494) that the Legislature has not, expressly or by implication, "amended or repealed" Section 1316, which gave to railroad companies the power "to regulate the time and manner in which the passengers and property shall be transported," etc., and that they still possess the power conferred by that section.

By this construction of the statute, this court is concluded:

> *Chicago, etc.*, v. *Minn.*, 134 U. S., 456;
> *Merchants' Bank* v. *Penn.*, 167 U. S., 461;
> *Mo. Pac. Ry. Co.* v. *Larabee Co.*, 211 U. S., 619.

We respectfully submit that the judgment of the State Court should be reversed.

BALIE P. WAGGENER,
Attorney for Plaintiff in Error.

3

Office Supreme Court, U. S.
FILED.
NOV 30 1909
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 38.

THE MISSOURI PACIFIC RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF KANSAS EX REL. CARR W. TAYLOR,
ETC., ET AL., DEFENDANT IN ERROR.

REPLY BRIEF.

B. P. WAGGENER,
Attorney for Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

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THE MISSOURI PACIFIC RAILWAY COMPANY,
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THE STATE OF KANSAS EX REL. CARR W. TAYLOR, ETC., ET AL., DEFENDANT IN ERROR.

REPLY BRIEF.

First.

In the order of the board is a finding of fact that the passenger train between Madison, Kansas, and Monteith Junction, or Butler, Missouri, "was operated at a loss, and there was no testimony introduced at the hearing that the train between Madison, Kansas, and the State line could be operated at a profit."

Second.

The evidence shows, without any conflict or contradiction (Abst., 62-64, 79), that it would not be feasible or practicable to operate a passenger train between Madison and the

State line, and the referee finds as a fact (Abst., 284) that "because of the advantages which other lines have in distance to trading centers and in directness of communication, through passenger traffic would not naturally seek the Madison line. Its location and connections necessarily place it at a serious disadvantage for anything more than local passenger business, no matter what trains may be operated," and concludes that "it would be unreasonable to require a separate passenger train to be operated on this line only within the State" (Abst., 289).

Third.

It will be observed that the referee (Abst., 287) finds that the Missouri Pacific Railway System (about 3,492 miles) for the year ending June 30, 1906,

received gross revenues	$21,506,592.41
Expenses	15,965,161.82
	$5,541,430.69

being amount available to pay taxes and fixed charges on $30,000,000 of bonds, not including the bonds on the Kansas and Colorado Pacific Railroad, the interest on which amounts to $1,463,720 annually. It will therefore be seen that the Madison branch, as an integral part of the entire Missouri Pacific Railway System, according to its proportion of all the earnings of that system, State and interstate, has never paid operating expenses, taxes, and fixed charges. In fact, the referee finds (Abst., 284) that "no interest has ever been paid on the bonds on the Madison branch, which amount to $1,622,000, the annual interest on which is (Abst., 231) $97,320. The referee finds the actual loss in operation of the Madison branch from July 1, 1903, to May 1, 1905, of $69,950.30 (Abst., 286), and from May 1, 1905, to April 1,

, of $96,972.58, making a total loss in
ation in three years of..... $166,922.88
which add three years' interest on bonds
$97,320 per year..... ..... 301,960.00

$468,882.88

which add taxes, approximately $200 per
ile per annum ($21,600)..... 64,800.00

$533,682.88

Fourth.

ie referee concludes (Abst., 288) that—

> "Since the defendant has combined this line of road for operation, management and accounting, with the Kansas and Colorado Pacific Railway Company lines, so as practically to constitute the twelve lines embraced by that company, a single unit for the purposes of operation and no definite ascertainment of the actual earnings of the Madison line can be made, a separate passenger service should be maintained if the net earnings of the Kansas and Colorado Pacific Railway justify the service."

page 116 of the abstract will be found a statement of
rnings and expenses of the entire Kansas and Colorado
ic Railway Company lines, by months, from July,
to March, 1906. The correctness of this statement we
t understand to be questioned.

hat period it shows gross earnings.... $16,399,820.72
nses of operation..... 13,839,917.95

$2,559,902.77

is covers practically three years.

For that period (Abst., 115) the interest charge was annually	$1,463,720.00
Taxes per year	314,000.00
	$1,777,720.00
	3
Total for three years	$5,332,160.00
Showing a deficit for three years in operation of	$2,772,250.00

If the aggregate deficit on the 1,500 miles of road operated by the Kansas and Colorado Pacific as a unit was $2,772,258.00, as shown for three years of operation, should be apportioned to the Madison branch, upon a mileage basis, the actual loss in the three years' operation would exceed $185,000, or about $62,000 per annum.

Fifth.

But let us take another view of the situation.

The referee finds (Abst., 287) that the earnings of all the lines in Kansas, including the lines of the Kansas and Colorado Pacific, for the year ending June 30, 1905, were	$10,483,311.59
Operating expenses were	8,056,004.59
Net earnings	$2,427,307.00

The number of miles, single track, thus operated, were 1990 (Abst., 287).

As has been shown (Abst., 116), the interest charge on the lines of the Kansas and Colorado Pacific was annually	$1,463,312.05
The taxes paid by the Missouri Pacific Railway in Kansas on [illegible] lines, annually (Abst., 277)	467,678.71
	$1,930,990.76
Assuming that the lines of the Missouri Pacific Railway (556) not included in mileage of Kansas and Colorado Pacific, have a fixed charge of $15,000 per mile (and it has much more than that as shown by the abstract) bearing 6% interest, the total amount of bonded indebtedness on the 556 miles in Kansas would be $8,340,000, at 6%, would equal annually	$500,400.00
	$2,431,390.76
From which deduct the net earnings as above	$2,427,307.00
Deficit	$4,083.76

Sixth.

The referee (Abst., 286) takes another period, viz., July 1, 1903, to May 1, 1905, and finds:

Earnings of Kansas and Colorado Pacific..	$10,673,778.71
Expenses	9,043,107.44
Net earnings	$1,630,671.27

From which deduct two years, interest ($1,463,312.05)	$2,926,624.10	
And two years' taxes at $314,000 per annum...	628,000.00	
		$3,554,624.10
And we have an actual deficit of.....		$1,923,952.43

Seventh.

The referee (Abst., 286) takes another period, viz., the year ending April 1, 1906, and finds that on the Kansas and Colorado Pacific, approximated on a mileage basis, the freight earnings were.....	$6,146,283.82
Expenses	5,162,679.96
Net.....	$983,603.86

and found (Abst., 286) that freight earnings from freight which originated or terminated on the Madison branch, or passed over some part of it, amounted to the sum of $125,947.79, from May 1, 1905, to April 1, 1906, of which amount $22,369.39 was apportioned to the Madison branch, which referee finds was an unfair division, but if it all had been apportioned to the Madison branch it would have made no material difference, for the loss in operation, for that same period (Abst., 287), was found to have been $96,972.58.

Eighth.

The attention of the court is invited to the specific issue made in the complaint before the board, and in the application for the writ and in the writ, viz: That the railway company was obligated "under and by virtue of the terms

of the charter above referred to to maintain daily freight and passenger train service upon the above-described line of railroad; that said defendant has refused and is refusing to comply with the terms of said charter and is maintaining only the freight train service upon said line of railroad, etc." (Abst., 10). The charter is attached as an exhibit to the writ (Abst., 11-12). Under the statute of Kansas, the writ is the petition. The basis of the complaint is that the railway company was violating and not complying with the terms and conditions of its charter. If, however, section 1316, General Statutes of Kansas, 1901, became a part of the charter and the company thereby had the right and power to "regulate the *time and manner* in which the passengers and property shall be transported, etc.," can it be successfully contended that failure to install and operate a separate passenger train is a violation and disregard of the terms and conditions of the charter? Does the grant of power to construct and operate a standard-gauge railway imply an obligation on the part of the grantee to use any particular kind of equipment?

B. P. WAGGENER,
Attorney for Plaintiff in Error.

Supreme Court, U. S.
FILED.
NOV 11 1899
JAMES H. McKENNEY,
Clerk.

No. 20,940.

In the Supreme Court of the United States.

October Term, 1899. No. 38.

THE MISSOURI PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF KANSAS, *ex rel.* CARL W. TAYLOR, Attorney for the Board of Railroad Commissioners, and C. C. COLEMAN, Attorney-general of the State of Kansas,
Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR BY G. F. GRATTAN, ATTORNEY FOR BOARD OF RAILROAD COMMISSIONERS.

G. F. GRATTAN,
Attorney for Board of Railroad Commissioners of Kansas,
For the Defendants in Error.

FRED. S. JACKSON

In the Supreme Court
of the United States.

THE MISSOURI PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF KANSAS, *ex rel.* CARR W. TAYLOR, Attorney for the Board of Railroad Commissioners, and C. C. COLEMAN, Attorney-general of the State of Kansas,
Defendants in Error.

BRIEF OF G. F. GRATTAN, ATTORNEY FOR THE BOARD OF RAILROAD COMMISSIONERS OF KANSAS.

STATEMENT OF CASE.

The supreme court of the state of Kansas at the final hearing sustained an order of the Board of Railroad Commissioners and ordered the peremptory writ of mandamus to issue to the plaintiff in error to operate a passenger-train within the state of Kansas from Madison, in Greenwood county, Kansas, to the eastern state line of Kansas. (Rec. 315.) Sections 3 and 4 of chapter 268 of the Session Laws of Kansas of 1907 provide as follows:

"SEC. 3. Said commissioners shall have the general supervision of all railroads operated by steam or electricity or other motive power within the state, and all express companies, sleeping-car companies, and all other persons, companies or corporations doing business as common carriers in this state; and shall inquire into any neglect or violations of the laws of this state by any person, company or corporation engaged in the business of transportation of persons or property therein, or by the officers, agents or employees thereof; and shall also from time to time carefully examine and inspect the condition of each railroad in the state, and of its equipment, and the manner of its conduct and management with reference to the

public safety and convenience; provided, this section shall not be construed as applying to street-railway or electric lines operated wholly within one county.

"SEC. 4. Whenever in the judgment of the Board of Railroad Commissioners it shall appear that any railroad corporation or other transportation company fails in any respect or particular to comply with the terms of its charter or the laws of the state, or whenever in their judgment any repairs are necessary upon its road, or any addition to its rolling-stock, or any addition to or change of its stations or station-houses, or any change in its rates for transporting passengers or freight, or any change in the mode of operating its road and conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, said commissioners shall inform such corporation of the improvement and changes which they deem to be proper, by a notice thereof in writing, to be served by leaving a copy thereof, certified by the secretary of the board, with any station-agent, clerk, treasurer, manager or any director of said corporation, which notice shall state the time within which said improvements or changes are required to be made; and if such orders are not complied with within the time stated in said notice, the attorney for the board shall forthwith file with the commissioners a complaint in writing, praying for an investigation of said matter, which complaint shall be heard according to the provisions of this act as in other cases. Nothing in this section nor section 7 shall be construed as relieving any railroad company or other transportation corporation from their responsibility or liability for damage to person or property."

The petition of the state of Kansas for an alternative writ of mandamus *inter alia* shows that the plaintiff in error is a railway corporation owning and operating a railway line from the Kansas and Missouri state line, thence westward to Madison, Kan. (in Greenwood county), as a common carrier, being commonly known as the Madison line. That on the 14th of September, 1905, the citizens along such Madison line filed a complaint with the Board of Railroad Commissioners showing that in years past plaintiff in error had operated a passenger train over such Madison line, but that on the —— day of ———, 1905, had discontinued the same, and that the only passenger service was an accommodation or mixed train, and that the service is dangerous to the patrons of the road, and prevents it from maintaining a proper schedule for the arrival and departure of trains; that thereafter the plaintiff in error made answer thereto, and thereafter, after a full hearing, that the Board of Railroad Commissioners ordered the plaintiff in

error to operate a passenger-train on the Madison line in the state of Kansas. Also, that the Madison line now operated by plaintiff in error was originally chartered under the laws of Kansas May 29, 1885, as The Interstate Railroad Company, with full authority to carry on the business of a common carrier and to maintain a daily passenger and freight service over the Madison line. And on July 3, 1890, The Interstate Railroad Company was consolidated with The St. Louis & Emporia Railroad Company, under the name of The Interstate Railway Company, and thereafter, Jan. 10, 1891, The Interstate Railway Company, together with eleven other companies, consolidated into The Kansas & Colorado Pacific Railway Company, and under the agreements of consolidation it was at each time agreed and provided that the consolidated company should own and control the properties and privileges of the constituent companies and should be subject to all the obligations and liabilities to the state which belonged to and rested upon each of the companies making the consolidation. And that the Madison line, consolidated into The Kansas & Colorado Pacific Railway Company, has for many years past and is now being operated by The Missouri Pacific Railway Company by virtue of a contract of lease subject to all the obligations imposed by the terms of the charter granted to The Interstate Railroad Company, and is subject to all the obligations and liabilities to the state which belonged to or rested upon The Interstate Railroad Company. That The Missouri Pacific Railway Company, by virtue of the terms of the charter above referred to, is obligated to maintain daily freight- and passenger-train service on the Madison line, but the defendant has refused and is refusing to comply with the terms of the charter, and is maintaining only a freight-train service upon the Madison line, giving to the people living in the towns and people upon said Madison line and the country adjacent thereto only the opportunity to travel as passengers upon a car set into the freight-train operated upon said line. That such service is exceedingly dangerous, forces the passengers who are compelled to avail themselves of the same to assume risks of injury which they are not compelled to assume while riding as passengers upon regular passenger-trains; that by reason of these facts the said defendant has been and is violating its duty to the public and to the state under the provisions of the above-mentioned charter and the laws of the state of Kansas; and that

the order of the Board of Railroad Commissioners was made by the board by virtue of the power and authority vested in it by the laws of the state of Kansas. (Rec. 1-14.) The answer of the plaintiff in error to the alternative writ is in effect a general denial, and that the board is without jurisdiction in the premises. (Rec. 14-19.) By agreement of the parties a referee was appointed to take the evidence and to make findings of fact and conclusions of law. (Rec. 20.) And the referee made the findings of fact found in the record, 282 to 289, and the supreme court of Kansas rendered judgment found in part in the record, 290 to 315, found in full in the 76 Kan. 467.

BRIEF AND ARGUMENT.

I.

"All questions arising under the constitution and laws of the state of Kansas are settled adversely to the plaintiff in error by the decision of the supreme court of the state. (Merchants Bank v. Pennsylvania, 167 U. S. 461, and cases cited in the opinion.)"

Mo. Pac. Rly. v. Larabee Mills, 211 U. S. 619.

II.

We submit that this court is without jurisdiction; commerce among the states, nor the instruments thereof, is not concerned nor involved. The order of the Board of Railroad Commissioners does not control nor interfere with any existing train, nor with commerce nor the instruments of commerce. The order of the board requires plaintiff in error to install and operate within the state of Kansas an ordinary passenger-train. It is not the regulation or control of an existing train, but it is the compelling of a corporation to live up to the end of its creation and existence. The plaintiff in error's answer to the order of the board is that it cannot install and operate a passenger-train within the state of Kansas without going across into the state of Missouri a few miles and engaging in interstate commerce. The whole contention of plaintiff in error is a figment or invention of the mind. The claim that the order regulates commerce among the states does not exist in fact, but exists in an assertion for the basis of an argument. There is no train in existence, no train in operation that the order affects or deals with; the order requires the installing

and operating of a train and a force of employees not in a commercial sense in existence. The only thing in existence is the corporation and the road-bed and track within the state, and the installing and operating an ordinary passenger-train thereon within the state cannot be a regulation of commerce among the states. The order of the board requiring the installing and operating of an ordinary passenger-train on such road within the state cannot any more be a regulation of commerce among the states than the ringing of a bell or the blowing of a whistle at a crossing, or any other police regulation concerning the safety of the lives of the traveling public thereon. But were it held that this order does concern in some sense the instruments of commerce among the states, then we contend that the doctrine of this court recognized and continued in the Larabee Mills case, in 211 U. S. 612, is decisive of the affirmance of this case. Plaintiff in error contends, it would seem, that the instant that a railroad receives a consignment to a point outside a state it at once becomes a corporation engaged in commerce among the states, and that the state can no longer exercise any governmental or police power over the corporation or over any of its property within the state. Such ultra claim of plaintiff in error would withdraw from the states all power whatever concerning such corporation or its property. Such claim of plaintiff in error carries with it its own refutation. Such claim would withdraw from the states all power to secure the lives and property of its citizens and others having dealings with or brought in contact with such corporations. There can be no Union without the states in union. The commerce of the nation is relatively no more important than the commerce within the state, and it is important to the Union that the commerce within the state shall never be impaired. To unnecessarily augment the commercial power of the nation at the expense of the commercial power of the states will never strengthen the Union. No citizen should ever seek to misrepresent the power of Congress to regulate commerce among the states by lessening the rightful commercial power of the state. The worth of the Union to all of the states is too well known to be argued; but can it always be said that the worth of the commercial power within a state is too well understood to need no argument? That commerce which is national must never be encroached upon by the states, nor must that national commerce ever encroach upon the commerce out of its realm

and confined within the states. Perhaps there is no railroad in a state that is not to some extent engaged in commerce among the states. A train out of Boulder, Colo., to another point within Colorado was found to have carried a package originating in the state of Nebraska, and it was held engaged in commerce among the states when the safety appliance law was involved. The tendency of the railroads is to claim that the railroads are subject to the exclusive jurisdiction of Congress, no matter how great the commerce within the state and no matter how trivial the commerce among the states. The fact that the railroad is engaged in commerce among the states is made the criterion to exclude the state from enforcing its laws which affect the railroads. The power to regulate commerce among the states being exclusively in Congress, when the act of the state is the subject of inquiry, the broad question should be whether the act of the state unnecessarily interferes with or burdens commerce among the states. Suppose the state and Congress has each passed an identical act and the state is enforcing its enactment, where can an interference or burden arise? The states have and do regulate commerce, but the nation sustains such acts when not an unnecessary interference with or burden on commerce among the states; and when an unnecessary interference or burden the nation annuls such regulation. This is done because of the dual relation of the states and nation. The thought running through all of the decisions of this court is that the nation shall be paramount in the regulation of commerce among the states. Ought not the criterion be whether the enactment is an unnecessary interference or burden upon commerce among the states? The states ought not to encroach upon the power of Congress to regulate commerce among the states, and Congress should not augment commerce among the states by absorbing commerce within the states. The rightful powers of the states and the rightful powers of the nation ought to be observed and enforced for the welfare of the states and the security of the Union. The state of Ohio required a *part* of the trains to stop and let off and take on passengers, and in the Lakeshore, Mich. & So. Ry. v. Ohio (173 U. S. 285), the enactment was upheld by this court as not an unnecessary interference, while the enactment of the state of Illinois requiring *all* trains to stop to let off or take on passengers was held in the Cleveland Ry. Co. v. Ill., 177 U. S. 514, to be an unnecessary interference

with the power to regulate commerce among the states. The Mississippi Railroad Commission ordered certain trains of the Illinois Central to stop and take on and let off passengers. This court, in the Miss. R. R. Com. v. Ill. Cent. R. R., 203 U. S. 344, recognizes the doctrine of the above and other decisions of this court, and holds that where the carrier has not discharged its duty to the community the state may stop the necessary trains, and that it is not an unlawful interference, and that where the carrier has furnished proper and adequate facilities to the state, it cannot lawfully cause such interstate trains to be stopped. The holding is that the carrier must discharge its duty, and if it fails that the state may necessarily impede the through interstate trains that such duty be discharged. Where Congress has made a direct regulation, that regulation is exclusive. Congress has made no direct regulation in the case at bar.

The case at bar does not involve the regulation of commerce among the states within the meaning of the federal constitution. It involves the power of the state to require a corporation to abide by its charter and the laws of the state, in that the corporation shall operate an ordinary passenger-train and to not subject the traveling public to the dangers incident to a freight-train. The state finding plaintiff in error irregularly carrying passengers on freight-trains, only orders it to install and operate the usual passenger-train, and plaintiff in error replies that under the act of Congress its choice to haul passengers by freight has been so regulated by Congress that the state is powerless to require plaintiff in error to install and operate the ordinary passenger-train within the state of Kansas, when plaintiff in error does furnish no passenger-train for transportation within or through the state. Local laws existing by force of the police power of the state, which provide for the public health, the public morals and the public safety, are not within the meaning of the constitution a regulation of commerce among the states. It involves the power of the state to promote the general welfare of the people within the state, and which the constitution of the United States is designed to uphold. Lakeshore, Michigan & Southern Ry. Co. v. Ohio, 173 U. S. 285, and cases cited.

III.

The order requiring the railroad to abide by its charter and to discharge its duty to operate an ordinary passenger-train is a question for the state courts, and it is not reviewable in this court.

Eustis v. Bolles, 150 U. S. 361.
Weyerhouser v. Minn., 176 U. S. 550.
Hale v. Lewis, 181 U. S. 473.
Shaeffer v. Werling, 188 U. S. 516.
Railroad v. Miss., 210 U. S. 204.

IV.

The plaintiff in error in the state courts did not overcome the *prima facie* effect of the order of the Railroad Commission, and it must be presumed to be reasonable, as held by the state supreme court. And since this order is not to regulate an existing train but to require the corporation to live up to the purpose of its creation and existence by requiring it to discharge its duty by operating an ordinary passenger-train, the order is but an incident to the governmental power of the state for the public good. The "taking" of property only incidental to the legitimate exercise of governmental powers for the public good is not a "taking" of property for public use, and a right to compensation on account of such supposed injury does not attach under the constitution. (Union Bridge Co. v. U. S., 204 U. S. 397; Northern Pac. Ry. v. Duluth, 208 U. S. 593, and cases cited.) This road was built east and west across four counties by aid of counties and townships, crossing numerous railroads extending north and south, and covers an extensive territory, but fails to discharge one of the objects of its creation, and if it be not required to discharge its duty, the public must be denied transportation and a territory encumbered with this railroad that will not support another. If the state cannot require a corporation engaged in commerce and transportation to discharge its duty, then the state would have no power to cause the forfeiture of a charter and the surrender of a franchise, or to require a depot, road-bed or bridge to be made safe. In other words, if it lacks in the power to enforce the duty in this case, it lacks all power usually exercised under the head of police power. We submit that there is no question

nor facts in the record to give this court jurisdiction, and the action should be dismissed, or the judgment be affirmed.

Respectfully submitted.

G. F. GRATTAN,

Attorney for the Board of Railroad Commissioners of Kansas.

For the Defendants in Error.

FRED S. JACKSON

MISSOURI PACIFIC RAILWAY COMPANY *v.* STATE OF KANSAS EX REL. RAILROAD COMMISSIONERS.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 38. Argued November 30, 1909.—Decided February 21, 1910.

The fact that a railroad company is chartered by another State and has projected its lines through several States does not make all of its business interstate commerce and render unconstitutional, as an interference with, and burden upon interstate commerce, reasonable regulations of a State Railroad Commission applicable to a portion of the lines wholly within, and which are valid under, the laws of that State.

Quære whether on writ of error where the constitutional question is whether a rate or duty prescribed by a state commission amounts to deprivation of property without due process of law, this court is bound by a finding of the state court that a rate or duty is not actually confiscatory.

There is a difference between the exertion of the legislative power to establish rates in such a manner as to confiscate the property of a public service corporation by fixing them below a remunerative

standard and one compelling the corporation to render a service which it is essentially its duty to perform; and an order directing a railroad company to run a regular passenger train over its line, instead of a mixed passenger and freight train, is not, even if such train is run at a loss, a deprivation of property without due process of law, or a taking of private property for public use without compensation; nor is such an order an unreasonable exercise of governmental control. Such an order if made by the railroad commission of a State is not an interference with, or burden upon, interstate commerce if it relates to a portion of the line wholly within that State.

A state statute making provisions for passengers riding on the caboose of freight trains will not be construed as a declaration of the State that there is no distinction between passenger train service and mixed train service, especially where, as in Kansas, the liability of the railroad is limited as to persons riding in cabooses.

An order cannot be said to be such an unreasonable exertion of authority as to amount to deprivation of property without due process of law, because made operative only to the limit of the right to do so.

While railway property is susceptible of private ownership and protected by constitutional guarantees, these rights are not abridged by being subjected to governmental power of reasonable regulation.

Where a contract is held subject to the reserved power to alter, amend or repeal, the right conferred, whatever be its extent, is subject to such reserved power; and so held that a charter privilege to regulate train service is subject to the reasonable and otherwise legal order of a commission created by the legislature, and such an order is not invalid under the contract clause of the Federal Constitution.

An order of the railroad commission of a State requiring a train to be run from a point within the State to the state line is not invalid if otherwise legal, as an interference with, or burden upon, interstate commerce because there are no present terminal facilities at the state line and it is more convenient to the corporation to run the train to a further point in the adjoining State.

76 Kansas, 467, affirmed.

THE facts are stated in the opinion.

Mr. Balie P. Waggener for plaintiff in error:

The order of the board and the mandate of the state court were, in substance and effect, a regulation of commerce among the States, and beyond the jurisdiction. *L. & N. R. R. Co.*

v. *Eubanks*, 184 U. S. 27; *Hall* v. *DeCuir*, 95 U. S. 480, 489. It is not the wording of the regulation, but the necessary effect thereof, which determines its invalidity. *Henderson* v. *Mayor*, 92 U. S. 259; *State Freight Tax Cases*, 15 Wall. 276.

The order of the board, on its face, is manifestly unreasonable, and, in the light of the findings of fact, arbitrary, and without the first element of due process of law, and a denial of the equal protection of the law guaranteed by the Federal Constitution. It is not justified under the police power. *Welch* v. *Swasey*, 214 U. S. 105.

It amounted to a taking of property for public use without compensation. *C., B. & Q.* v. *Chicago*, 166 U. S. 241.

The power of regulation is not without limit, and is not a power to destroy or the power to compel the doing of the services without reward, or to take private property for public use without just compensation, or without due process of law. *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362; *L. & N. R. Co.* v. *Central Stock Yards*, 212 U. S. 132; *Railroad Commission Cases*, 116 U. S. 307, 331.

A corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it. *Smyth* v. *Ames*, 169 U. S. 466, 546; *Dow* v. *Beidelman*, 125 U. S. 680; *Ga. R. R. Co.* v. *Smith*, 128 U. S. 174, 179; *Railway Co.* v. *Wellman*, 143 U. S. 339; *Budd* v. *New York*, 143 U. S. 517; *Railway Co.* v. *Gill*, 156 U. S. 649; *Road Co.* v. *Sandford*, 164 U. S. 578.

When, as in this case, there is a conflict between the state law, the courts and company, who is to manage the property? That in no proper sense is the public the manager was held in *Interstate Comm. Comm.* v. *Chi. G. W. Ry. Co.*, 209 U. S. 108, 113.

The record shows that the separate train could not be operated except at a loss.

The enforcement of the order here complained of, under the circumstances, disclosed by the record, would not be regulation, but confiscation. *Atlantic Coast Line* v. *N. Car. Corp.*

Comm., 206 U. S. 1; *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362; *Budd* v. *New York*, 143 U. S. 517; *C., B. & Q.* v. *Chicago*, 166 U. S. 241; *McNeil* v. *Southern Ry. Co.*, 202 U. S. 543, 559; *L. & N. R. R. Co.* v. *Stock Yards*, 212 U. S. 132, 144; *Smyth* v. *Ames*, 169 U. S. 466.

The order of the board of railroad commissioners was a usurpation of power by the board, and the construction placed upon the law by the state court impaired the obligation of the contract between the State and the railway company, in violation of the Constitution of the United States, and deprived it of its property without due process of law and without compensation, and denied to it the equal protection of the law.

The reserved power to alter or amend could be exercised only by the legislature and not by the commission and until the legislature acted the company has a contract charter right to regulate its train service that cannot be impaired. *Fletcher* v. *Peck*, 6 Cranch, 87; *Dartmouth College* v. *Woodward*, 4 Wheat. 518; *Charles River Bridge* v. *Warren*, 11 Pet. 420. Nor can a vested right be taken away by judicial construction. *Dodge* v. *Woolsey*, 18 How. 360.

That would equally amount to impairing the contract. *State Bank* v. *Knorp*, 16 How. 391; *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116; *Jefferson Bank* v. *Shelley*, 1 Black, 436; *University* v. *People*, 99 U. S. 321; *New Orleans W. W.* v. *Sugar Co.*, 125 U. S. 36; *L. & N. R. R. Co.* v. *Palmer*, 109 U. S. 256.

The right of the company to regulate its trains applies to manner as well as time, and as to effect of word "manner" as used in this connection, see *Railroad Co.* v. *Cincinnati*, 1 Ohio Prob. R. 269, 278; *City* v. *Caulkins*, 85 Pa. St. 253; *Bankers' Life Co.* v. *Robbins*, 59 Nebraska, 174; *Pitcher* v. *Board*, 20 Ill. App. 326; *People* v. *Railroad Co.*, 176 Illinois, 176, distinguished. There is no statute of Kansas which specifically requires the company to run this train, and so mandamus will not lie, *Railroad Co.* v. *Dustin*, 142 U. S. 492, and

as to lack of power of courts to enforce the order adversely to the charter contract, see cases *supra* and *Georgia &c.* v. *Smith*, 128 U. S. 174; *Chicago R. R. Co.* v. *Iowa*, 94 U. S. 155; *Peik* v. *Railway Co.*, 94 U. S. 164; *Ruggles* v. *Illinois*, 108 U. S. 526; *Salt Co.* v. *East Saginaw*, 13 Wall. 378; *Stanislaus Co.* v. *San Joaquin*, 192 U. S. 201, 206; *Tomlinson* v. *Jessup*, 15 Wall. 458.

Mr. Fred S. Jackson, with whom *Mr. G. F. Grattan* was on the brief, for defendants in error.

Mr. Justice White delivered the opinion of the court.

This is a writ of error to a judgment of the Supreme Court of Kansas ordering a peremptory mandamus commanding the Missouri Pacific Railway Company to obey an order of the state board of railroad commissioners. The order directed the putting in operation of a passenger train service between Madison, Kansas, and the Missouri-Kansas state line, on what is known as the Madison branch of the Missouri Pacific Railway Company.

The branch road in question lies between Madison, Kansas, and Monteith Junction, Missouri. From Madison to the state line is 89 miles and from the state line to Monteith Junction is 19 miles, the total distance between the two terminal points being 108 miles. At Monteith Junction the Madison branch intersects with the Joplin line of the Missouri Pacific, by means of which connection is made with Kansas City and other points. There being no terminal facilities at Monteith Junction, the trains operated on the Madison branch do not remain over at the junction, but run as far as Butler station, three miles distant on the Joplin line, where terminal facilities exist.

There are no large towns on the Madison branch, either in Kansas or Missouri, and the country which that branch serves is largely agricultural, Kansas City being the nearest and

most natural market for the products of the territory. The greater volume of the passenger travel, however, originating on the Madison branch does not move to Kansas City by going to Monteith Junction, but leaves the branch at various points between Madison and the state line, at which points the branch crosses various roads, which, generally speaking, run in a northerly or northeasterly direction, affording a means of reaching Kansas City more directly than by going to Monteith and thence *via* the Joplin line to that city. Three of these intersecting roads are operated by the Atchison and Topeka, two by the Missouri, Kansas and Texas, one by the St. Louis and San Francisco, one by the Kansas and Colorado Pacific, and one by the Missouri Pacific. Pleasanton is the last station on the branch in Kansas and is six miles distant from the state line.

Without clearing up some confusion in the record upon the subject, we take the fact to be as stated by the court below, that the branch between Madison and Monteith Junction, at least so far as it was constructed within the State of Kansas, was built by a Kansas corporation chartered in 1885, known as the Interstate Railroad Company, and that to aid in the building of the road within the State of Kansas about two hundred thousand dollars was contributed by counties through which the road passed. A construction company did the work, at the contract cost of $1,095,000, and this sum was paid by the railway company by delivering to the contractors an issue of $1,622,000 of six per cent mortgage bonds. The Interstate Railroad Company, in July, 1890, consolidated with another Kansas corporation known as the St. Louis and Emporia Railroad Company, the consolidated company being designated as the Interstate Railway Company. Subsequently, in December, 1890, by authority of a statute of Kansas, the Interstate Railway Company and eleven other Kansas railway corporations were consolidated, the consolidated company being designated as the Kansas and Colorado Pacific Railway Company.

The Missouri Pacific Railway Company is a corporation chartered in Missouri, Kansas, and Nebraska. It owns virtually all the mortgage bonds issued by the Interstate Railroad Company for the construction of the Madison branch and a majority of the stock of that company. Indeed, it is the owner of a majority of the stock and mortgage bonds of all the constituent companies which united in forming the consolidated company known as the Kansas and Colorado Pacific Railway Company, and, as the lessee of the latter company, operates its lines of road, including, of course, the Madison branch. It is not questioned that substantially all the equipment used in operating the roads covered by the leases is owned by the Missouri Pacific Railway Company.

In September, 1905, residents along the Madison branch within the State of Kansas filed a petition with the board of railroad commissioners, alleging, in substance, that only a mixed train was furnished for passenger service on the branch, that such service subjected the public to great inconvenience, prevented anything like a regular and timely passenger service, and, besides, was dangerous to those traveling over the road. An order was prayed requiring the Missouri Pacific to operate a regular passenger train over the branch road between Madison and the state line. The evidence introduced before the board is not in the record. After a hearing, the following finding and order was made (76 Kansas, 490):

"Now, on this seventh day of December, 1905, after hearing the evidence and argument of counsel, in the above-entitled action, the board finds that during the years 1902 and 1903, when the respondent railway company operated a passenger train on said Madison branch of its line, that the said passenger train was operated at a loss, and there was no testimony introduced at this hearing that the train, if put on as asked for by the petitioners, could be operated at a profit to the respondent company. The board believes that the people along the line of the Madison branch of said company are entitled to better passenger train service than they are

now receiving, and it has been represented to the board by officers of said company that the respondent is constructing motor cars for establishment on its branch lines that can be operated at a much less expense than steam service.

"It is therefore ordered by the board that on or before the first day of May, 1906, a motor passenger car service be put on and operated on said Madison branch, from Madison, Kansas, to the Kansas and Missouri state line, and in the event said railroad company is unable at that time to put on a motor car passenger service, a regular steam passenger train service be forthwith put on and operated."

The road not having obeyed, this proceeding by mandamus was commenced to compel compliance.

Three special defenses were set up in the return to the alternative writ. In the first it was insisted that the branch road was an interstate road and could only be operated as such, and, therefore, was not subject to the jurisdiction of the railroad commission or the courts of the State of Kansas, and in the second it was claimed that the burden which would be occasioned by compelling the operation of a passenger train service would be confiscatory and in violation of rights protected by the Fourteenth Amendment. The court below, in its opinion, thus, we think, accurately summarized the elaborate averments relating to the two defenses just referred to (76 Kansas, 470):

"To the alternative writ an answer was filed which denies that the company operated the Madison branch as a line of road wholly within the State of Kansas, and alleges that said branch is a part of the Missouri Pacific general system; that defendant maintained terminal facilities for the said branch at Butler, Mo., twenty miles east of the Kansas State line, where the branch connects with the main line of defendant's railroad, that the company has no terminal facilities near the State line within the State of Kansas, and that the branch road cannot be operated as a road within the State of Kansas without such terminal facilities, to maintain which would

involve the company in ruinous expense. It also alleges that the order is unreasonable and confiscatory, and that the company could not comply with it without great financial loss; that the entire revenue of the road within the State of Kansas, including passenger and freight business, is insufficient to meet the expense and cost of operating the road within the State; that from July 1, 1903, to April 30, 1905, it maintained separate passenger train service upon this branch, but was obliged to abandon the same and return to the mixed passenger and freight service because the total receipts of passenger and freight business during that period proved wholly insufficient to meet the expenses of operation. It further alleges that compliance with the order of the board would compel defendants to divert its revenues from other lines and parts of its system outside the State of Kansas to the maintenance of separate passenger train service in the State, and that the extent of such additional cost would amount to a confiscation of its property."

The third defense set up that the company was diligently endeavoring to perfect a motor car for experimental purposes, that the practical utility of such service on railway tracks was problematical, and that it was the design of the company "to test the practicability of said character of service on its said Madison branch line as soon as the same can be done, and is also its design to furnish said motor car service for separate passenger traffic if the cost of said service can be brought within the passenger service cost of the mixed train service, which it now furnishes, and if said motor car service can be successfully operated from the standpoints of utility and safety and other considerations necessary to be taken into account."

By stipulation a referee was appointed to take evidence and report findings of fact and conclusions of law. The referee transmitted the evidence taken and made lengthy findings of fact, upon which his conclusions of law were stated. Those conclusions briefly were that although it might be un-

reasonable to order a separate passenger train service to be operated on the branch line, viewed as an absolutely independent line, it was not unreasonable to compel the furnishing of such service, viewing the line as a part of the system of the Missouri Pacific road, and taking into account the possible benefits which might arise to that system. It was, however, concluded that as the branch road was an interstate road, and could only be operated as such, the State was without power to compel the putting in operation of the passenger train service between Madison and the state line, and that the relief prayed for should therefore be refused.

It was recognized by the Supreme Court of Kansas when it came to consider the report of the referee that the authority which the commission had exerted in making the order took its source in a section of the act of the legislature of Kansas enacted in 1901, and now found in § 5970, General Statutes of Kansas of 1901, the section being as follows:

"Whenever in the judgment of the railroad commissioners it shall appear that any railroad corporation or other transportation company fails in any respect or particular to comply with the terms of its charter or the laws of the State, or whenever in their judgment any repairs are necessary upon its road, or any addition to its rolling stock, or any addition to or change of its stations or station houses, or any change in its rates for transporting freight, or any change in the mode of operating its road and conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, said commissioners shall inform such corporation of the improvement and changes which they adjudge to be proper, by a notice thereof in writing, to be served by leaving a copy thereof, certified by the commissioner's secretary, with any station agent, clerk, treasurer or any director of said corporation; and if such orders are not complied with, the said commissioners, upon complaint, shall proceed to enforce the same in accordance with the provisions of this act as in other cases."

Reviewing the findings and conclusions of the referee, the court held that the referee was wrong in holding that there was a want of power in the commission to make the order, and it was therefore decided that the order was valid and that the duty of the railroad company was to obey it. 76 Kansas, 467.

A brief summary of the questions passed on by the court will serve to an understanding of the assignments of error which we are called upon to consider:

a. The court disposed of certain contentions which would seem to have been raised at the argument concerning the repugnancy to the state constitution of the law creating the commission and conferring authority upon that body, and held the objections untenable. As these involved matters of purely state concern we shall not further refer to them.

b. The court also adversely disposed of a contention based upon the assumption that the railway company had by its charter a contract right to regulate the time and manner of operating its trains, and hence was not subject to the order which the commission had made. Although such contention did not deny that the charter right relied on was subject to repeal or amendment by the legislature, it was urged that, as the legislature had not expressly amended or repealed the right, such a result should not be made to flow from the section conferring powers upon the commission, as repeals by implication were not favored.

Having thus cleared the way for the graver questions which the case involved, the court came to consider, first, the reasonableness on its face of the order of the commission, viewed in the light of the findings of that body; second, the reasonableness of the order tested by the findings of the referee and the evidence upon which such findings were based; and third, the validity of the order in view of the power of Congress to regulate interstate commerce as applied to the nature and character of the road to which the order of the commission was made applicable.

As to the first, although the duty of the company under its charter was referred to and authorities were cited, with evident approval, holding that the obligation to operate a separate passenger train service rested upon a railroad company in the fulfillment of the law of its being, the court did not expressly pass upon that aspect of the case, but held that as it did not plainly and obviously result upon the face of the findings and order made by the commission, that the service required would be rendered at a pecuniary loss, it could not in any event be said that the order was unreasonable on its face. As to the second, considering the inherent and *prima facie* reasonable nature of the service, the performance of which the order commanded, along with the findings of the referee and the evidence, it was held that the unreasonableness of the order had not been established, since, taking all the foregoing into account, it had not been affirmatively proven that any material pecuniary loss would be sustained from rendering the service in question. In reaching this conclusion it was pointed out that as a result of the state statute a *prima facie* presumption of reasonableness attached to the order of the commission, and therefore the burden was on the railroad company to overcome this presumption. As to the third contention, it was held that the exertion by the State of its authority to regulate the operation within the State of the road chartered by the State was but the exercise of a lawful state police power which did not impose any direct burden upon interstate commerce, and hence did not conflict with the Constitution of the United States.

The grievances which the railroad company deems it may endure by the enforcement of the order of the commission as commanded by the court are expressed in many assignments of error. To consider them in detail is not essential, as all the complaints which they embrace were embodied in the argument at bar by the counsel for the railway company in the following propositions:

"First. The order of the board and the mandate of the

State court were, in substance and effect, a regulation of commerce among the States, and the court was without power or jurisdiction in the premises.

"Second. The order of the board, on its face, is manifestly unreasonable, and, in the light of the findings of fact, arbitrary, and without the first element of due process of law, and a denial of the equal protection of the law guaranteed by the Federal Constitution.

"Third. The order and judgment of the State court, on the evidence and facts found, deprived the railroad company of its property without due process of law, and without compensation, and denied to it the equal protection of the law.

"Fourth. The order of the board of railroad commissioners was an usurpation of power by the board, and the construction placed upon the law by the State court impaired the obligation of the contract between the State and the railway company, in violation of the Constitution of the United States, and deprived it of its property without due process of law and without compensation, and denied to it the equal protection of the law."

While it may be that in some of their aspects each of the first three propositions involve considerations apparently distinct from the others, as in substance the ultimate reasons by which all three are controlled, are identical, we consider them together. Before doing so, however, we dispose of the question concerning the alleged impairment of a contract right, protected by the Constitution of the United States, which is formulated in the fourth proposition, by pointing out the twofold contradiction upon which the proposition is based. As it is not denied that the asserted charter right was held subject to the power of the State to repeal, alter or amend, it follows that the proposition amounts simply to saying that an irrepealable contract right arose from a contract which was repealable. *Hammond Packing Co.* v. *Arkansas*, 212 U. S. 322, 345. Stating the contention in a different form, the same contradiction becomes apparent. As

the argument concedes the existence of the legislative power to repeal, alter or amend, and as it is impossible to assume that a legislative act has impaired a contract without by the same token declaring that such act has either repealed, altered or amended, hence the proposition relied upon really contends that the contract has been unlawfully impaired by the exercise of a power which it is conceded could lawfully repeal the contract. And, of course, this reason is controlling, irrespective of the scope of the alleged charter right, since whatever be the extent of the right conferred it was subject to the reserved power.

The court in *Atlantic Coast Line* v. *N. Car. Corp. Com'n*, 206 U. S. 1, reiterating a doctrine expounded in preceding cases, said (p. 19):

"The elementary proposition that railroads from the public nature of the business by them carried on and the interest which the public have in their operation are subject, as to their state business, to state regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned in view of the long line of authorities sustaining that doctrine."

Also in the same case, restating a principle previously often announced, it was held (p. 20) that railway property was susceptible of private ownership, and that rights in and to such property securely rested under the constitutional guarantees by which all private property was protected. Pointing out that there was no incompatibility between the two, the truism was reannounced that the right of private ownership was not abridged by subjecting the enjoyment of that right to the power of reasonable regulation, and that such governmental power could not in truth be said to be curtailed because it could not be exerted arbitrarily and unreasonably without impinging on the enduring guarantees by which the Constitution protected property rights.

The *Coast Line case* was concerned with the exertion of

state power over a matter of state concern. But the same doctrines had been often previously expounded in reference to the power of the United States in dealing with a matter subject to the control of that Government. Moreover, in the cases referred to, as the power of the two governments operated in different orbits, it was always recognized that there was no conflict between them, although it was constantly to be observed that, resulting from the paramount operation of the Constitution of the United States, even the lawful powers of a State could not be exerted so as to directly burden interstate commerce.

Coming to apply the principles just stated to the order in question, and considering it generically, it is obvious that it exerted a lawful state power. Its commands were directed to a railroad corporation which, although chartered by other States, was also chartered by Kansas, and concerned the movement of a train on a branch road wholly within the State which had been built under the authority of a Kansas charter, although the road was being operated by the Missouri Pacific under lease. The act commanded to be done was simply that a passenger train service be operated over the branch line within the State of Kansas. Unless then for some reason, not manifested in the order, intrinsically considered, it must be treated as such an arbitrary and unreasonable exercise of power as to cause it to be, in effect, not a regulation, but an infringement upon the right of ownership, or, considering the surrounding circumstances, as operating a direct burden upon interstate commerce, it is clear that, within the doctrine previously stated, no error was committed in directing compliance with the order. And this brings us to consider the several reasons relied upon to establish, first, that the order made by the railroad commission was so arbitrary and unreasonable as to cause it to be void for want of power; or, second, that the order was void because its necessary operation was to place a direct burden upon interstate commerce.

1. *The alleged arbitrary and unreasonable character of the order.*

In its principal aspect this contention is based on the insistence that the order and findings of the commission and the findings of the referee, when elucidated by the proper inferences of fact to be drawn from the evidence, show the service which the order commanded could not be rendered without a pecuniary loss. And this, it is insisted, is the case, not only because of the proof that pecuniary loss would be occasioned by performing the particular service ordered, considering alone the cost of that service and the return from its performance, but also because it is asserted the proof establishes that the earnings from all sources, not only of the branch road, but of all the roads operated by the Missouri Pacific in Kansas, produced no net revenue and left a deficit. It is at once evident that this contention challenges the correctness of the inferences of fact drawn by the court below. They therefore assume that we are not bound by the facts as found by the court below, but must give to the evidence an independent examination for the purpose of passing on the constitutional question presented for decision. But we do not think that the case here presented requires us to consider the issues of fact relied upon, even if it be conceded, for the sake of argument only, that on a writ of error to a state court, where a particular exertion of state power is assailed as confiscatory because ordering a service to be rendered for an inadequate return, the proof upon which the claim of confiscation depends would be open for our original consideration, as the essential and only means for properly performing our duty of independently ascertaining whether there had been, as alleged, a violation of the Constitution. We say this because, when the controversy here presented is properly analyzed, the first and pivotal question arising is whether the order complained of did anything more than command the railroad company to perform a service which it was incumbent upon it to perform as the necessary result of the possession and en-

joyment of its charter powers, and which it could not refuse to perform as long as the charter powers remained and the obligation which arose from their enjoyment continued to exist. The difference between the exertion of the legislative power to establish rates in such a manner as to confiscate the property of the corporation by fixing them below a proper remunerative standard and an order compelling a corporation to render a service which it was essentially its duty to perform, was pointed out in *Atlantic Coast Line* v. *N. Car. Corp. Com'n*, *supra*. In that case the order to operate a train for the purpose of making a local connection necessary for the public convenience was upheld, despite the fact that it was conceded that the return from the operation of such train would not be remunerative. Speaking of the distinction between the two, it was said (p. 26):

"This is so (the distinction) because as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled, although by doing so as an incident some pecuniary loss from rendering such service may result. It follows, therefore, that the mere incurring of a loss from the performance of such a duty does not in and of itself necessarily give rise to the conclusion of unreasonableness, as would be the case where the whole scheme of rates was unreasonable under the doctrine of *Smyth* v. *Ames*. . . .

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"Of course, the fact that the furnishing of a necessary facility ordered may occasion an incidental pecuniary loss is an important criteria to be taken into view in determining the reasonableness of the order, but it is not the only one. As the duty to furnish necessary facilities is coterminous with the powers of the corporation, the obligation to discharge that duty must be considered in connection with the nature and productiveness of the corporate business as a whole, the character of the services required, and the public need for its performance."

Indeed, the principle which was thus applied in the *Atlantic*

Coast Line case had previously, as pointed out in that case, been made the basis of the ruling in *Wisconsin &c. Ry. Co.* v. *Jacobson*, 179 U. S. 287. The fact that the performance of the duty commanded by the order which is here in question may, as we have conceded for the purpose of the argument, entail a pecuniary loss, is, of course, as declared in the *Atlantic Coast Line case* as a general rule, a circumstance to be considered in determining its reasonableness, as are the other criteria indicated in the opinion in that case. But where a duty which a corporation is obliged to render is a necessary consequence of the acceptance and continued enjoyment of its corporate rights, those rights not having been surrendered by the corporation, other considerations are in the nature of things paramount, since it cannot be said that an order compelling the performance of such duty at a pecuniary loss is unreasonable. To conclude to the contrary would be but to declare that a corporate charter was purely unilateral, that is, was binding in favor of the corporation as to all rights conferred upon it and was devoid of obligation as to duties imposed, even although such duties were the absolute correlative of the rights conferred. Was the duty which the order here commanded one which the corporation was under the absolute obligation to perform as the result of the acceptance of the charter to operate the road, is then the question to be considered.

It may not be doubted that the road by virtue of the charter under which the branch was built was obliged to carry passengers and freight, and therefore as long as it enjoyed its charter rights was under the inherent obligation to afford a service for the carrying of passengers. In substance this was all the order commanded, since it was confined to directing that the road put on a train for passenger service. True it is that the road was carrying passengers in a mixed train, that is, by attaching a passenger coach to one of its freight trains. Testing the alleged unreasonableness of the order in the light of the inherent duty resting upon the corporation, it follows

that the contention must rest upon the assumption that the discharge of the corporate duty to carry passengers was so completely performed by carrying them on a mixed train as to cause an order directing the running of a passenger train to be so arbitrary and unreasonable as to deprive of rights protected by the Constitution of the United States. But when the necessary result of the contention is thus defined its want of merit is, we think, self-evident, unless it can be said as a matter of law that there is such an identity as to public convenience, comfort and safety between travel on a passenger service train and travel on a mixed train—that is, a train composed of freight cars with a passenger car attached —as to cause any exertion of legislative authority for the public welfare based on a distinction between the two to be repugnant to the Constitution of the United States. The demonstration as to the want of foundation for such a contention might well be left to the consensus of opinion of mankind to the contrary. The unsoundness of the proposition was clearly pointed out by the Supreme Court of Illinois in *People* v. *St. Louis, A. & T. H. R. Co.*, 176 Illinois, 512, 524, where it was said:

"Independently of the provisions of the lease, which was a contract between the lessor and the lessee companies, the right of the people to insist upon the running of a separate passenger train is implied from the charter obligation to equip and operate the road. Inasmuch as a railroad company is bound to carry both passengers and freight, the obligation of the appellee required it to furnish all necessary rolling stock and equipment for the suitable and proper operation of the railroad as a carrier of passengers, no less than as a carrier of freight. It cannot be said that the carriage of passengers in a car attached to a freight train is a suitable and proper operation of the railroad, so far as the carriage of passengers is concerned. The transportation of passengers on a freight train or on a mixed train is subordinate to the transportation of freight, a mere incident to the business of carry-

ing freight. To furnish such cars as are necessary for the suitable and proper carriage of passengers involves the necessity of adopting that mode of carrying passengers which is best adapted to secure their safety and convenience. This can be accomplished better by operating a separate passenger train than by operating a mixed train; that is to say, the duty of furnishing all necessary rolling stock and equipment for the suitable and proper operation of a railroad carrying passengers involves and implies the duty of furnishing a train which shall be run for the purpose of transporting passengers only, and not freight and passengers together."

Even, however, if it be conceded that the reasoning of the case just cited may not be universally applicable because conditions might exist which in some cases might cause a different rule to apply, there is no room for such view in this case. This is so because, as was pointed out by the court below, the statutes of Kansas in force at the time the branch road was incorporated lend cogency to the conclusion that the effect of the acceptance of the charter was to bring the road under the obligation of furnishing passenger service, a duty which could not be escaped by giving the service only on a mixed train and thus subjecting passengers to the resulting dangers and inconveniences. Nor do we think there is any force in the argument elaborately pressed, that chapter 274, Kansas Laws of 1907, as amended by chapter 190, Laws of 1909 (which is in the margin),[1] shows that the law

[1] Part of Chapter 274, Kansas Laws of 1907, as amended by Chapter 190, Laws of 1909.

That all freight trains to which a caboose is attached shall be obliged to transport, upon the same terms and conditions as passenger trains, all passengers who desire to travel thereon, and who are above the age of fifteen years, or who, if under fifteen years, are accompanied by a parent or guardian, or other competent person, but no freight train shall be required to stop to receive or discharge any passenger at any other point other than where such freight train may stop; nor shall it be necessary to stop the caboose of such trains at the depot to receive and discharge passengers; provided, that on such trains the

of Kansas proceeds on the conception that there is no distinction between a passenger train service and the carriage of passengers on a mixed or freight train. On the contrary, we think the statute referred to sustains the opposite inference, since it recognizes that persons who avail of the right conferred to travel in the caboose of a freight train are not entitled to ordinary passenger facilities or to the legal protection ordinarily surrounding passenger traffic. The first, because the statute provides that persons must get on or off the caboose where the company finds it convenient to place that car, and second, because persons riding in the caboose are afforded redress for injury only where the company is guilty of gross negligence.

The contention that the order is unreasonable in and of itself, irrespective of whether there is profit in the operation of the train service which the order commands to be operated, because it directs the movement of the passenger train directed to be run to the state line, where, it is said, there are no terminal facilities, and no occasion for the termination of the transit, is disposed of by the considerations previously stated. We say this because its unsoundness is demonstrated by the reasoning which has led us to conclude that there was no merit in the contention that the fact of pecuniary loss was of itself alone adequate to show the unreasonableness of the order. This follows, from the principle which we have previously expounded to the effect that the criterion to apply in a case like this is the nature and character of the duty ordered

railroad companies shall only be liable for their gross negligence; and provided further, that this act shall not be construed to apply to freight trains on main lines, the most of which trains shall be composed of cars loaded with live stock.

Any officer or employé of such railroad company who shall violate any of the provisions or conditions of § 1 of this act shall, upon conviction, be deemed guilty of a misdemeanor, and shall be fined in any sum not less than ten nor more than one hundred dollars, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment.

and not the mere burden which may result from its performance.

2. *That the order was void because it operates a direct burden upon interstate commerce.*

To support this proposition it is urged that the charter of the Interstate Railroad Company, the builder of the branch, provided for a road not only in Kansas but to extend into Texas and Missouri, and therefore for an interstate railroad. This being its character, the argument proceeds to assert that the regulation of traffic on the road, whatever be the nature of the traffic, was interstate commerce and beyond the control of the State of Kansas. But this simply confounds the distinction between state control over local traffic and Federal control over interstate traffic. To sustain the proposition would require it to be held that the local traffic of the road was free from all governmental regulation, unless at the same time it were held that the incorporation of the road had operated to extend the powers of the Government of the United States to subjects which could not come within the authority of that Government consistently with the Constitution of the United States. Manifestly, the mere fact that the charter of the road contemplated that it should be projected into several States did not change the nature and character of our constitutional system and therefore did not destroy the power of Kansas over its domestic commerce or operate to bring under the sway of the United States matters of local concern and of course could not project the authority of Kansas beyond its own jurisdiction. The charter therefore left the road for which it provided subject as to its purely local or state business to the authority of the respective States into which it was contemplated the road should go, and submitted the road as an entirety, so far as its interstate commerce business was concerned, to the controlling power conferred by the Constitution upon the Government of the United States.

The contention that a burden was imposed upon interstate

commerce by causing the train to stop at the state line where there were no terminal facilities, but in a disguised form reiterates the complaint which we have already disposed of, that the order, because of the direction to stop at the state line, was so arbitrary and unreasonable as to be void. The order cannot be said to be an unreasonable exertion of authority, because the power manifested was made operative to the limit of the right to do so. Besides, the proposition erroneously assumes that the effect of the order is to direct the stoppage at the state line of an interstate train, when, in fact, the order does not deal with an interstate train or put any burden upon such train, but simply requires the operating within the State of a local train, the duty to operate which arises from a charter obligation. It is said that as the state line may be but a mere cornfield and great expense must result to the railway from establishing necessary terminal facilities in such a place, it must follow that the road, in order to avoid the useless expense, must operate the passenger service directed by the order, not only to the state line, but twenty miles beyond to Butler, on the Joplin line, where terminal facilities exist. From these assumptions, it is insisted, that the order must be construed according to its necessary effect, and, therefore, must be treated as imposing a direct burden upon interstate commerce by compelling the operation of the passenger train, not only within the State of Kansas, but beyond its borders. But under the hypothesis upon which the contention rests the operation of the train to Butler would be at the mere election of the corporation, and, besides, even if the performance of the duty of furnishing adequate local facilities in some respects affected interstate commerce, it does not necessarily result that thereby a direct burden on interstate commerce would be imposed. *Atlantic Coast Line* v. *Wharton*, 207 U. S. 328.

Affirmed.